A PRACTICAL GUIDE TO THE NEW INCOME-TAX LAW

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(Retired)

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INTRODUCTION

This book is written before the new Income-Tax Act has been properly digested even by the Authorities themselves and before there is any "practice" to refer to. The Act is largely the result of a compromise arrived at at the last minute and that accounts for the fact that there are certain sections which seem to be quite unworkable and even quite unintelligible. The Notes attempt to give the ordinary business man a sort of general idea of what the Act means. Some of them must be wrong. Even Sir James Grigg and Mr. S. P. Chambers are definitely wrong in some of their statements in the Assembly. No attempt has been made to deal with case law. There are several excellent publications dealing with that. They will all need considerable revision now that the change in law has made many decisions inapplicable. In the fond hope of a second edition, I would ask readers to let the publishers or myself know what other topics ought to be dealt with.

I have to acknowledge the considerable help I have had from my assistant Mr. N. Dutton and the benefit derived from discussions with Mr. Bhut Nath Kar.

S. K. SAWDAY.

CALCUTTA,
September, 1939.

CONTENTS OF BOOK

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THE NEW INCOME TAX LAW

AGRICULTURAL INCOME

Agricultural income. Profits and gains from agriculture are exempt from income-tax and are not included in total income for rate purposes. [Section 4 (3) (*viii*) read with section 16 (*1*)].

"Agricultural income" is defined somewhat lengthily in section 2 (*1*), but in practice its differentiation from business and other sources of income has occasioned considerable difficulty, and has led to a volume of case law on the subject.

A simple rendering of the subject is difficult but, broadly speaking, before any income can be treated as agricultural, the following conditions should have been complied with.

(*a*) The land from which the produce is obtained must have been assessed to and have paid land revenue or any other local Government rate.

(*b*) Where the produce has to be subjected to any process before it can be sold, the process should be of the rough and ready type normally employed by a cultivator, and not one in which modern machinery plays an important part.

If these two conditions are complied with, the income from the produce, and from the conversion and sale of the produce will be exempt in the hands of the cultivator or the receiver of rent in kind.

Section 2 (*1*) (*c*) refers to the exemption from tax of buildings used by the cultivator or receiver of rent in kind. To qualify for this exemption the following rules are laid down:—

(*a*) The building should be on or in the immediate vicinity of the land.

(*b*) It should be one owned by and one which the cultivator, or the receiver of the rent or revenue or the receiver of the rent-in-kind, by reason of his connection with the land, requires as

a dwelling house, a store house, as a place in which to carry on any process of the nature mentioned above, or as an out office.

The reading of even this simple explanation will show that the definition gives rise to many ambiguities. For example, the produce may be subjected to a mixed crude and modern process, in which case it becomes necessary to distinguish between what can be termed agricultural and what portion can be styled business.

A. Revenue Receipts. The following types of receipts have been held as non-agricultural and are, as such, taxable :—

(1) *Abwabs*—Illegal Abwabs such as *"Uttarayan"*.

(2) *Commission* paid to a landlord by his tenants for selling their agricultural produce.

(3) *Storage rent, Punhaya Nazar and Nazar on petitions.* In this case, the income was from land used for storing purchases of food crops, etc. by merchants.

(4) *Rent* from land let out for storing timber.

(5) *Interest* on cash loans repayable in paddy. (*Sabapi* loans).

(6) *Interest on promissory note for arrears of rent.*

(7) *Lambardari Fees.*

(8) *Maintenance allowance* paid through a zemindar's wife as a result of her husband's will appointing her as an executrix. The lady was also given a life estate in the properties, movable and immovable, and was to give her daughters Rs. 600 per month until her death, when the estate was to pass on to her daughters. Arrears of maintenance were held taxable.

(9) *Maintenance allowance* of a widow charged on the estate, on her waiving all claims to a share in the estate.

(10) *Salary* paid to the co-owner of an estate.

(11) *Rent* received from a flour mill for the land on which the mill was built.

(12) *An Annuity* received as part of the sale price of an agricultural estate.

(13) *Income from the sale of water* from canals in an agricultural estate to neighbouring cultivators, even where irrigation dues have been paid to Government.

The following receipts are exempt from income-tax :—

(1) *Dharat.* Weighing charges on their produce received by a landlord in addition to rents from his tenants, by an agreement entered into with them.

(2) *Nazar* paid to a landlord for his recognition of succession, settlements or partition.

(3) *Mutation fees* paid by tenants to a zemindar on succeeding to inherited holdings.

(4) *Transfer fees* for the transfer of non-transferable occupancies paid by the transferee to the landlord.

(5) *Nazar* or *salami* paid for the recognition of a non-transferable holding or for the settlement of waste lands.

B. Receipts akin to Business. *The following sources of income have been held taxable*:

(*a*) *Markets, moorings and ferries.*

(*b*) *Fisheries,* including fisheries in a permanently settled estate.

(*c*) *Leasing of fishing rights*—even where such income is included for fixing peshkush payable to Government.

(*d*) *Salt manufacture* by flooding land with sea water.

(*e*) *Quarries*—including income from the sale of stone.

The following are exempt:—

(*a*) *Sisal fibre* manufactured from aloe plants, including the portion of manufacture carried out by machinery.

(*b*) *Forestry*—In cases where the timber is sold by the owner of the land on which the trees are grown.

(*c*) *Pasturage* including rents received from graziers for grazing their cattle on forest and waste land, in a permanently settled estate.

(*d*) *Sale of Toddy*—Where the income is derived by the cultivator of the land on which the trees are grown.

C. Income partly Agricultural and partly Business. The words "ordinarily employed by a cultivator or receiver of rent-in-kind" have given rise to certain difficulties, as a result of which it is necessary to allocate between agriculture and business in the case of certain manufacturing concerns which also produce the raw materials necessary for the commodity they manufacture.

(1) *Tea Estates.*—The percentage in this case has been fixed by rule 24 at 40% business and 60% agriculture.

(2) *Sisal Fibre* manufactured by machinery from aloe plants is totally agricultural.

(3) *Rubber.*—In practice, treated as totally agricultural.

Usufructuary Mortgages. The income from these has been held to be exempt. The Income-tax Enquiry Committee in their report (see Report, page 8) suggested that section 2 (1) of the Act should be so amended as to make usufructuary mortgages taxable, but that in cases in which the mortgagee had actually become the proprietor of the land, the exemption should apply.

Such an amendment in the definition of Agricultural Income would, however, first require the sanction of the Governor-General under section 141 of the Government of India Act, 1935 and so far has not been made, with the result that the old law continues to apply.

Simple Mortgages. The income from these is clearly non-agricultural and as such is taxable.

It is possible, however, that a mortgage of this nature may be disguised in an attempt to represent it as a usufructuary mortgage. In such a case of course, the true nature and not the exhibited form will decide the assessment.

Similarly, payment in kind received in lieu of cash interest is taxable.

Leased Land. It will be noted that though buildings must be the property of the assessee before they can qualify for agricultural exemption, no such provision exists in the case of the land from which the produce is obtained. Income from agricultural land is as such exempt, even in cases where there are several intermediary lessees.

Jagirdar. Assignment of land revenue to a Jagirdar is not assessable income in the hands of the Jagirdar.

Foreign Agricultural Income. The second proviso of section 4 (2) of the old Act (taxation of foreign income brought into British India) read thus:

"Provided further that nothing in this sub-section shall apply to income from agriculture arising or accruing in a State in India from land for which any annual payment in money or in kind is made to the State."

The omission of this proviso from the section as amended, now makes such income taxable.

This change has been brought about mainly on the recommendation of the Income-tax Enquiry Committee (Report, page 8).

Such income is now taxable as and when brought into British India, and in the case of those resident and

ordinarily resident, taxable also as foreign income when not brought in, subject of course to the exemption of Rs. 4,500.

The following extract from the speech of Mr. Chambers in the Council of State illustrates the present position clearly (Council of State Debates, pp. 110-111) :—

Honourable Mr. S. P. Chambers: "I think an Honourable Member raised the question of the exemption of agricultural income in Indian States. Here I think he is under some misapprehension. First of all, agricultural income in an Indian State is not exempted from British Indian income-tax.

"At present it is chargeable on the basis of the amounts received in British India. All that has been done is to change the basis and say that it shall be taxed whether it is brought into British India or not. In a sense it is wrong to speak of the previous exemption of such income. There never has been an exemption in the strict sense of the word. What we are trying to do is to take this on the basis of the amount arising and not on the amount brought into or received in British India, and it is suggested by a comparison with agricultural income in British India that this may in some measure be unfair. But may I remind the Honourable Member that agricultural income even in British India is not entirely exempted from income-tax? The position with agricultural income in British India is that it is not a subject for central taxation. The provinces have a right to tax that income, and, in fact, one province, Bihar, has already imposed an income-tax.

"For the purpose of central income-tax agricultural income which is exempt, is exempt for all purposes and for super-tax purposes as well. Therefore, if we exempted agricultural income arising in an Indian State, we would not only be going further than the existing law of giving an exemption which does not already exist, but we should be putting agricultural income in an Indian State in a better position than agricultural income in British India, and that I submit is not justified.

"Then there was one point raised by the Honourable Mr. Pantulu about income arising abroad, and it is a general point. He suggested that as the Indian Government does not protect their nationals abroad, why should we tax their income? May I mention that it is not the Indians who have been killed in Burma whom we are seeking to tax. We are seeking to tax persons resident in British India on incomes arising abroad. Those Indians who are resident abroad remain exempt from taxation from income arising abroad."

ALLOWANCES UNDER THE UNITED KINGDOM LAW

Deductions allowed. The following deductions are allowed from income to ascertain taxable income:—

Earned income allowance.—One-fifth of earned income with a maximum of £300. Earned income includes pensions but not annuities.

Bachelor's or widower's allowance.—£100.

Married man's allowance, provided the wife is living with or is maintained by her husband.—£180.

Wife's earned income allowance.—If the wife has earned income, exclusive of pension or superannuation paid to her on account of her husband's work, four-fifths of such income subject to maximum of £45.

Children's allowance.—per child £60. Child must be under 16 at the commencement of year of assessment or if over 16 must be receiving full time instruction. Child must not have personal income of over £60 a year.

The claim covers adopted children also.

Housekeeper's allowance.—£50. Allowed if widower has a female relative of himself or his wife living with him or if no relative available, some other female. Not admissible if the female is married and her husband is claiming the married allowance.

Dependent relative allowance.—per relative £25. Applies only to widowed mother or mother-in-law or any relative incapacitated by old age and infirmity whose income does not exceed £50.

APPEALS

Appeals against assessment. The maximum period allowed to an assessee for initiating an appeal against an assessment under the Act is 30 days *plus* the time taken in getting copies of the Income-tax Officer's order—except of course in cases where a review petition is filed within one year, and the Commissioner is not bound to interfere. The Revenue, on the other hand, can go back four and even eight years (see *"Re-opening of Assessments"*).

As a result of representations made by several public bodies throughout the country, several important amendments have been introduced, but as the majority of them do not come into force till after 1st April, 1941, the postponed provisions are discussed under a separate heading—*"Appellate Tribunal"*, infra.

A. Appeals to the Appellate Assistant Commissioner. The immediate superior of the Income-tax officer is the Assistant Commissioner and it is to this official in the first instance that all appeals against orders passed by an Income-tax Officer are to be addressed. It should be noted that Assistant Commissioners are now divided into two groups—Inspecting and Appellate. The former merely supervise the Income-tax Officers and their functions are purely executive. The latter have had all executive authority taken from them and are now solely entrusted with the hearing of appeals. It is hoped that this change will help to remove the charges of partiality so often levelled against them.

An appeal is now possible against almost any order passed by an Income-tax Officer: The specific cases mentioned in the Act, however, are enunciated below [Section 30 (*i*)] :—

(*i*) Against the figure on which an assessment has been made (including an *ex parte* assessment).

(*ii*) Against the figure of loss arrived at in the Income-tax Officer's computation. (See *"Carry Forward of Losses"*).

(*iii*) Against the figure of tax levied in any assessment (including an *ex parte* assessment).

(*iv*) Against an Income-tax Officer's refusal to acknowledge an assessee's contention that he is not liable to be assessed under the Act, either on a part or on the whole of his income.

(*v*) Against an Income-tax Officer's refusal to register a firm. (See under "*Registration*").

(*vi*) Against an Income-tax Officer's refusal to reopen an *ex parte* assessment. (See "*Appeals against ex parte Assessments*").

(*vii*) Against a penalty imposed for failure to intimate the Income-tax Officer within 15 days of the discontinuance of a business, profession or vocation.

(*viii*) Against any order passed by an Income-tax Officer in determining whether or not a Hindu undivided family has actually partitioned and against subsequent orders of assessment on the members or groups of members.

(*ix*) Against an assessment made on the successor to or the predecessor of a business, profession or vocation that has changed its proprietorship.

(*x*) Any of the fines referred to in para A (*Penalties*).

(*xi*) Any of the penalties detailed in para C (*Penalties*).

(*xii*) Penalty for failure to submit either statement of securities asked for by the Income-tax Officer (See *Penalties*).

(*xiii*) Penalty for failure to pay tax demanded in due time.

(*xiv*) Refusal to grant a refund, or double income-tax relief to either the assessee or to his heir, executor or other legal representative, and the amount of such refund.

(*xv*) Against an order passed by an Income-tax Officer assessing individual members of a company on its undistributed income. (See under "*Compulsory Declaration of Dividends*").

An appeal against a penalty for non-payment of tax demanded (xiii above) will not be entertained unless the demand has been paid.

Time limit. An appeal should ordinarily be preferred within 30 days of the receipt of the notice of demand or loss in connection with an assessment, or of the date of receipt of an order passed by the Income-tax Officer.

Special forms to suit the various types of cases are obtainable on demand, and are self-explanatory.

Copies of orders passed by the Income-tax Officer can be obtained by filling up a special form and affixing a two anna Court-fee stamp. The time taken in obtaining such a copy is added to the 30 days mentioned above.

The Assistant Commissioner has the option of extending the time limit, but these powers are only exercised in very special cases. The day on which the order complained

against was passed is also added to the 30 days mentioned above. (Section 67-A).

Hearing. On receipt of the Appeal, the Assistant Commissioner fixes a date for hearing and sends a notice intimating the assessee accordingly, asking for any evidence he may desire.

Failure to attend or produce evidence does *not* result in the appeal being dismissed for default, but the assessee has only himself to blame if the Assistant Commissioner's decision in the absence of such evidence is not up to his expectations. Adjournments can be given at the Assistant Commissioner's discretion and he has also the authority to make any enquiries he considers necessary, or to have such enquiries made by the Income-tax officer.

Special care should be taken when filing an appeal to make the points given in the application exhaustive, as fresh objections can only be introduced at a later date with the Assistant Commissioner's permission.

Normally no arguments or evidence not brought up before the Income-tax Officer will be admitted at the appellate stage.

Where the assessment of a firm affects that of a partner, he may appeal against the assessment as a whole, as also against the manner in which the figure has been apportioned among the partners. This applies also in the case of losses.

Exactly the same provisions apply to the members of a company who have been assessed directly on its undistributed income. (See *Compulsory Declaration of Dividends*).

The Assistant Commissioner cannot impose a penalty without giving the assessee the chance of being heard.

The Assistant Commissioner's decision is communicated officially to the assessee in writing and a copy of his order is available on application.

As the Appellate Assistant Commissioner now performs *quasi* judicial functions, the Income-tax officer has been given the right to be present or represented at the time an appeal is heard.

B. Appeals to the Commissioner of Income-tax. These are allowed in cases where the Appellate Assistant Commissioner enhances an assessment or penalty on appeal or levies a penalty. No direct appeal is permissible against orders passed by an Income-tax officer, but the assessee may ask for his case to be reviewed (see "*Reviews*"). The procedure throughout is the same as in appeals to the Assistant Commissioner. (See A above).

C. Appeals to the High Court (ss. 66 and 66A). These are permissible only where a point of law arises and never on questions of fact.

Section 66 (*1*) allows such an appeal against orders passed in any assessment or proceeding under the Act other than proceedings in a prosecution before a magistrate, but the time limit provisions imply that all avenues of appeal to the Income-Tax Authorities must first be exhausted, except in the case of a prejudicial order passed by the Commissioner of Income-tax in review. In this last case the point of law involved must be incidental to the order of review itself and not to a previous order in appeal reviewed by the Commissioner.

Time limit. Sixty days from the date of the service of a notice intimating the result of an appeal made to the Appellate Assistant Commissioner or the Commissioner, or of a prejudicial order passed by the Commissioner of Income-tax in review. (See *Review*). The number of days taken in securing a copy of the order in question are added to the sixty days mentioned above.

Deposit. With a view to discourage petty and frivolous appeals, a deposit of Rs. 100 is provided for in each case. This sum will be refunded if the Commissioner refuses to state the case, or decides the point himself without reference to the High Court. The deposit if paid in cash should be presented at the Treasury on the strength of a challan obtainable on request at the Commissioner of Income-tax's office. Cheques, may, however, be attached to the application.

Procedure. This is rather unusual and should be carefully studied. The applicant in each case where an appeal is to be made to the High Court is the Commissioner of Income-Tax and not the assessee. The law allows the Commissioner [section 66 (*1*)] to make such an application *suo moto* or on the request of an assessee. The appeal therefore should be addressed to the Commissioner asking him to state the specific points mentioned in the appeal to the High Court.

On receipt of the application the Commissioner will go into the merits of the case and is authorised to withhold a reference if in his opinion no question of law arises. He is also at liberty to decide the issue himself in favour of the assessee, making a reference unnecessary. In the latter case the application should be formally withdrawn within 30 days along with a formal application for the return of the deposit.

It is possible, however, that the Commissioner may err in deciding whether or not a question of law is involved, and to

provide for such an eventuality, the assessee is permitted to approach the High Court direct stating the points at issue and asking for a *mandamus* compelling the Commissioner to refer the case. This is also permissible in cases where the Commissioner withholds a reference on the ground of it being time-barred.

The period allowed for such applications to the High Court is six months from the date of receipt of notice refusing to state a case on the grounds that no question of law arises, and two months in cases where the application for a reference is treated as time barred.

If the High Court is not satisfied that the points at issue have been clearly stated, it may send the case back to the Commissioner for amendment in any manner directed. [See section 66 (*4*)].

The fact that a case has been referred to the High Court does not stay the payment of tax originally demanded.

Income-tax references to the High Court are to be heard by a Bench of not less than two judges and, in respect of any such case, the provisions of section 98 of the Code of Civil Procedure 1908 apply regardless of anything contained in any Letters Patent of any High Court or in any other law there is in force.

Up to 31st March, 1939, cases emanating from the N.W.F.P. were under the jurisdiction of the High Court at Lahore. This has since been amended and such cases will now be referred to the Judicial Commissioner of the N.W.F.P. and will be heard by the Judicial Commissioner and a Judge. Where there is a difference of opinion, the decision of the Judicial Commissioner holds good.

Special jurisdictions. Other special jurisdictions are as below :—

(*a*) British Baluchistan ...	High Court of Judicature, Lahore.
(*b*) Province of Ajmer-Merwara	High Court of Judicature at Allahabad.
(*c*) Province of Coorg ...	High Court of Judicature at Madras.

A copy of the judgment of the High Court will be sent to the Commissioner of Income-tax under the seal of the Court and the signature of the Registrar and the Commissioner will dispose of the case accordingly or arrange for such disposal if the reference arose from a decision of one of his subordinates.

Costs will be decided at the discretion of the Court and any plea for execution in such cases may be transmitted by the High Court to a Lower Court. Where, as a result of the reference a refund is due to the assessee, it shall be granted along with any interest the Commissioner may allow unless the Commissioner decides to appeal to the Privy Council and intimates the High Court of his intention to ask for leave to this effect, within 30 days of the receipt of the result of the reference. The refund may then be stayed with the High Court's permission, until such time as the appeal to the Privy Council is disposed of.

Appeals to the Privy Council. These may be made against the judgment of a High Court if the High Court certifies the case as a fit one for further appeal, and the procedure laid down in the Code of Civil Procedure applies in the same manner as in appeals to the High Court. Such a step, however, does not stay the carrying out of a judgment of the High Court except in the special case of a refund mentioned above, or the payment of tax.

On receipt of the judgment of the Privy Council the case shall be disposed of in the same manner as in the case of a High Court judgment, with the exception of course that the Commissioner can no longer withhold a refund under any circumstances.

Regardless of any of the foregoing provisions and even in cases where the High Court refuses leave to appeal to the Privy Council, it is possible that an appeal may be admitted if the assessee has a strong case.

Review of decision by High Court. The High Court cannot review or revise a judgment given on a reference.

D. Appeals to Civil Courts. These are not permitted under any circumstances and no prosecution, suit or other proceeding can be brought against an officer of the Department for anything done or intended to be done in good faith under the Act. (Section 67).

E. Appeals against Ex parte Assessment. (Section 27). Before 1-4-39 no appeal was possible against the quantum of an *ex parte* assessment. The only remedy open to an assessee was to approach the Income-tax officer within one month from the date of receipt of a notice of demand with a petition showing that he was prevented by sufficient cause from filing a return of income or complying with notices issued by an Income-tax Officer. (See "*Exparte Assessment*"). If he succeeded in satisfying the Income-tax officer on these points

the case was set aside and a fresh assessment made after calling for any evidence necessary. If the petition was unsuccessful, the assessee was permitted to approach the Assistant Commissioner requesting him to overrule the decision of the Income-tax officer. In no case, however, was the figure of assessment questionable in appeal.

The position this year (1939) is rather confusing. Appeals are allowed both to the Assistant Commissioner and the Income-tax officer but how this will work in practice will have to be studied when the time arrives. Possibly the two appeals may be made simultaneously. An important point is that an appeal against the *figure* of assessment is now possible to the Appellate Assistant Commissioner but not to the Income-tax officer. *Cave.* See also under *"Penalties-exparte Assessments"*, infra.

Commissioner's power of Review. (Section 33). The Commissioner of Income-tax as administrative head of the Department in his Province, is authorised to send for the file of any assessee in his jurisdiction and review at his discretion any order passed by an authority subordinate to him. If any such order passed by him, however, has the effect of enhancing an assessment, he must give the assessee an opportunity of being heard in the matter.

This power of the Commissioner is generally exploited by assessees as giving them an additional appeal against an order of an Assistant Commissioner where no appeal is preferrable in the normal course.

This power of review can be exercised only once in any one subject matter but it is still doubtful whether or not a Commissioner can rectify a previous order passed in review by his predecessor in office or by himself.

References on points of law resulting from such reviews can only be made where the point of law emanates from the review itself and not from orders of a subordinate authority.

Where a High Court decision in any particular case affects the assessments made on other assessees this section can be availed of to obtain any adjustment incidental on the new interpretation to be given to a particular section as a result of the decision.

APPELLATE TRIBUNAL

This is a most important change introduced by the Amendment Act, and will go a long way to allay the discontent that at present exists against the current system of making Departmental Officials the final authority in the hearing and deciding of appeals.

The Tribunal is to come into existence on a date not later than 1st April, 1941. Meanwhile, however, the Assistant Commissioners have been divided into two classes, Inspecting and Appellate. The former will supervise the work of the Income-tax Officers and carry out executive functions only. The work of the latter is of a quasi-judicial character, and will consist solely in the hearing of appeals. It is hoped that this innovation will make them independent of departmental influence and permit of an unbiased decision in appeals. This attempt at impartiality, though laudable, is however, to a certain extent stultified by the fact that the Commissioner of Income-Tax retains his authority to overrule any of their decisions at will (sec. 33)—powers that he can continue to exercise until the Tribunal comes into existence.

The following extract from Mr. Chambers' speech in the Council of State (page 65) explains all that is necessary to know in connection with the impending change:—

"Then, in the machinery side, we have of course a very important change, an Appellate Tribunal is proposed, and that is dealt with in Part II of the Bill. The reason for putting this in a separate Part of the Bill, even though the amendments are spread throughout the Act, is that it would impose too heavy a burden upon the Department to have such a radical change made at a time when so many other changes were being made both in the organisation of the Department and the incidence of the tax. For that reason the provisions are put into Part II of the Bill and the intention is that they shall come into force two years after the Bill itself comes into force. Now, the main lines of the proposal were settled in Select Committee and they were these. First of all, a Tribunal was to be set up consisting of not more than ten persons half of whom would be judicial members, that is to say, persons of approximately the status of a District Judge—no less status than that—and half of them were to be what has been described as accountant members, that is to say, persons with experience in accountancy matters and business matters generally. The intention is to have appeals heard by Benches of two members drawn from the Tribunal which would be a kind of panel and one judicial member would sit with one accountancy member, so that when a case came up which dealt with difficult points of accountancy or of business generally, the experience and knowledge of the accountancy member would be available, while of course, on points of law

there would be the experience and learning of the judicial member. Provision is made for referring to the President of the Tribunal of any case in which there is a difference between two members hearing an appeal and the President can then refer the matter to other members and take a majority decision. The precise rules for determining the manner in which that should be done have not been laid down; they have been left for the President to make himself. Now, one big difficulty which was feared when these proposals were first mooted was that there will be hundreds and thousands of appeals, some of them very small, which would go from the Assistant Commissioner to the Appellate Tribunal. I may say at this stage that the intention is that the various Benches should sit at the same time in different parts of India, so that one will be sitting in Bombay, one in Calcutta and perhaps another in Madras. Thus, in various parts of the country these groups of two would be hearing appeals at the same time. It was felt that the Tribunal would be flooded out by these appeals and that something must be done to prevent that, otherwise the increase in the number of members necessary to hear the appeals would be so great as to make the scheme altogether too costly. To get over that, the proposal is to provide for a fee of Rs. 100 for every appeal to be taken to the Tribunal. The assessee continues, of course, to have the right without any cost of going to the Assistant Commissioner, who in future will do nothing but hear the appeals and it is expected that he will be able to do substantial justice in all ordinary simple cases. That will mean that only those cases in which a very large point of substance or a very difficult point of law arises will, in fact, go to the Appellate Tribunal. That corresponds very largely, almost exactly, to the system of the Special Commissioners in the United Kingdom. There, the Special Commissioners are a full time body as here and they go on tours in twos all over the country and it is a practice for only fairly large and important cases to reach that stage. I think I have explained everything that need be explained on that Tribunal except possibly this that the Tribunal will not in any sense be under the control of the Commissioner as it is going to be an entirely separate judicial body and for that reason the right is given to the Income-tax Officer himself to lodge an appeal against the decision of either the present Assistant Commissioner or the Appellate Tribunal. His appeal against the Appellate Assistant Commissioner's decision would, of course, be on the instructions of his Commissioner of Income-tax and would follow the same course as that of an appeal by an assessee. The further stages will, of course, be nothing more than the reference to the High Court on a point of law in the same way as a point of law can now be referred by the Commissioner to the High Court. I think that is all I need say about the Appellate Tribunals."

The Appellate Tribunal is to receive appeals against the orders of the Appellate Assistant Commissioner. The assessee and the Income-tax officer, under the orders of the Commissioner, can both appeal.

With the establishment of the Appellate Tribunal, it is proposed to cancel the powers of the Commissioner under section 33. It is difficult to conceive of any greater administrative blunder. Some one somewhere in the Department has got to be the last stronghold of common sense. The Central Board

has in the past officially disclaimed all status under the Act but has nevertheless intervened executively on many occasions. The more rational interpretation of the double income-tax relief provisions of late was due to their action. The Assembly members have extracted various promises of an executive nature.

That is all very well for cases of general import but the Board cannot look into individual cases though Sir James Grigg did, in the Council of State, ask for information regarding one particular case that was quoted.

For individual cases, the Commissioner is the only authority to use his common sense. As always happens, the machine is gradually crushing the individual and in a few years red tape will bind all the officers effectively. The law cannot deal with every case in seventy or eighty sections and there must always be cases which must be dealt with inside the law but on a common sense basis. The Commissioner is to lose his power of restarting an assessment. If the assessee wishes to go to the High Court he is to lose his power of settling the matter even though recent case law has made an appeal unnecessary.

To deprive the Commissioner of his powers, seldom used and never misused, is to create a world of difficulty.

ASSEMBLY PROMISES

Promises made in the Legislative Assembly. During the course of the Debates various amendments were withdrawn on the promise that instructions would be issued to the officers of the Department. Assurances were also given at other times.

The following is a list of such executive promises. The references are to the pages of the official records of the debate.

(1) *Centralised staff* (p. 3578-80). It is apparently intended to have some staff at Delhi to examine penalty cases and to secure some sort of uniformity. Certain special and difficult classes of assessment may be carried out centrally but individual cases would not be selected. Whether the central staff would tour was not mentioned.

(2) *Salaries* (p. 3584). Mr. Chambers said that if salary is never paid, tax is not chargeable "because it is already accepted law that income which is payable but becomes not ultimately paid, in any circumstances whatsoever, is not income and cannot be assessed." This will comfort assessees whose salary is not too certain but March salary if due in March may be taxed in June and the troublesome question of a refund may arise.

(3) *Advances of salary* (p. 3588). A member asked for an assurance that if an employee takes a loan he will not be charged at once on it but will be charged gradually as if it was his salary. Sir James Grigg had no hesitation in giving that assurance which certainly seems contrary to section 7.

(4) *Salaries not paid* (p. 3595). Sir James Grigg assured the house that no tax would be collected on salaries not paid. Whether this means that no assessment will be made or that the assessment will be made and the collection allowed to stand over is not clear. Probably the latter.

(5) *Double Taxation* (3596). Mr. Chambers said : "It is not possible or legal to charge the same assessee twice in respect of the same income. Any attempt to do that and any section which purports to do that is, I think, outside the general charging section of the Act".

A valuable admission if Income-tax officers will live up to it but under the old Act there was one circular of a Commissioner which compelled double taxation in certain cases.

(6) *Occupier's taxes* (p. 3612). Sir James Grigg promised a circular to make it abundantly clear that occupier's taxes are deducted in arriving at annual value.

(7) *Depreciation rates* (p. 3663). Sir James Grigg promised that the new rates would be fixed after consultation with the interests concerned.

(8) *Welfare Expenditure* (p. 3666). Sir James Grigg stated that any general welfare expenditure is clearly allowed and promised to make this certain by repeating the instructions. The particular expenditure under discussion was money paid to a local hospital for attending employees by an employer who could not afford his own hospital. The Finance Member was quite wrong about it being allowed already in all cases.

(9) *Welfare expenditure* (p. 3667). The question under discussion was the provision of help for dependents. Sir James Grigg promised to see that the present practice was liberalised.

(10) *Salaries paid outside British India* (p. 3687). If paid for work done outside British India are not chargeable under the head salaries. Mr. Chambers agrees. Consequently, of course, no deduction can be made under section 18 (2B). The admission is needed because already a Bombay Income-tax officer is circularising assessees in a misleading sense.

(11) *Trust Capital* (p. 3838). A member asked if on a trust coming to an end and the capital reverting to the settlor it would be treated as income. Sir James Grigg "thought he could give a pretty good assurance" that it would not.

(12) *Audited Accounts* (p. 3871). Sir James Grigg gave an "*absolutely categorical assurance* that account books of foreign business will not be called for if regular and properly audited accounts are furnished each year and the Income-tax officer has no reason to believe that the audited accounts are incorrect".

This is perhaps the most valuable of all the assurances in the debate and assessees should note it carefully.

(13) *Time for payment* (p. 4049). Sir James Grigg admitted that some officers asked for unreasonably rapid payment and quoted a circular of the Board to the effect that the time should not be less than 14 days.

All one can say is that remarkably little notice is taken of this circular.

(14) *Agents and collection of tax* (p. 4054). The question arose as to an appeal being allowed against an order appointing a man agent under section 43. Mr. Chambers promised that the point could be taken up in an appeal against an assessment and Sir James Grigg had not the slightest hesitation in giving an assurance that it was not the intention of Government to try to collect the tax until the question of the proper appointment of an agent had been settled on appeal.

This is something but the fact remains that the less qualified a man is to be appointed agent, the less qualified is he to make a successful appeal on the question of the assessment and that no appeal reappointment is provided for.

(15) *Reopening of assessments under section* 34 (p. 4060). This must be done only on definite information. Sir James Grigg said: "There is every intention in proceeding under this section of informing the tax-payer of the grounds on which we are proceeding".

(16) *Reasonable instalments for payment on a section 34 assessment* (p. 4062). Sir James Grigg said: "There is every intention, even in the case of a discovered and condemned criminal, shall we say, that he shall be allowed reasonable time to atone for his offences and I can even conceive of cases where it will be difficult for a man who has to pay a very large sum even to pay up in 12 months. I think the Honourable Member must leave it to administrative instructions to see that reasonable instalments are allowed in case of discovery under section 34."

(17) *Harassment by Income-tax officers* (p. 4069). Sir James Grigg promised to do all he could to see that officers administered the law strictly and justly and not harshly or capriciously and that "if harshness is established against them they will be dealt with suitably and harshly".

A bad time coming for some up-country officers.

(18) *Income of an Agent* (p. 4071). Sir James Grigg assured a member that the income of an agent could not be taxed together with that of a principal.

(19) *Insurance Surrender Values, Commuted Pensions, etc.* (p. 4226). The exemption of these has been omitted. Mr. Sheehy assured the house that this had been done because the exemption was unnecessary, the receipts not being income.

(20) *Charities* (p. 4227). Sir James Grigg said there was no intention of taxing charities merely because they were devoted to one class of persons.

(21) *Income from a country with exchange restrictions* (p. 4240).

Sir James Grigg gave the assurance that instructions will be issued to see that there is no harshness caused by remittance of a large amount of profits when the restriction comes to an end. If during the period of non-remittance, there are losses caused by exchange depreciation they will be allowed as they accrue against the profits of the year.

This promise was made in connection with income arising in a foreign country which does not permit of the profits being brought to British India. Those profits, if taxable on the accrual basis will be so taxed but the tax will not be demanded until the profits can be brought to India. That is provided for by the proviso to section 45. What it does say is that the remittance of a large amount at one time will not be allowed to prejudice the assessee. If the assessee is taxable on such profits on an accrual basis, the promise is meaningless. If the assessee is assessed on a remittance basis, the promise seems impossible of fulfilment for it forces on the Income-tax Officer the impossible task of determining what the assessee might have remitted if there had been no restrictions. Apart from that, the promise is directly against the law. Any wise assessee in such a case will remit the large sum to Singapore and bring it here in driblets.

The last part of the promise seems quite meaningless. Whether the accrual basis or the remittance basis holds, the exchange ruling at the time of accrual or remittance must settle the rupee value of the profits or remittances.

Council of State.

(22) *Notices* (p. 55). Mr. Chambers said that notices will continue to be given to everyone known to be liable. That means that assessees on the list can wait for the form.

(23) *Penalties* (p. 56). Mr. Chambers said that if under-assessment was due to nothing more than carelessness on the part of the assessee and a case was re-opened a fair penalty would be the interest lost to Government by the under-assessment.

(24) *Wife's income* (p. 110). Mr. Chambers said that when a husband gave a wife pocket money weekly or monthly the Income-tax officer would not be in a position to prove that on a specific date there was a transfer by the husband and so would be driven to the commonsense view that any income from the wife's savings must be treated as her income.

This may or may not be correct in law but is a very valuable admission as to the burden of proof.

(25) *Co-operative Societies* (p. 114). Sir James Grigg promised to look into the case of these assessees. The excessive amount of super-tax paid was the cause of complaint.

ASSESSMENTS (SECTIONS 22, 23.)

A. Modes of assessment. There are three methods of making an assessment.

(*1*) Acceptance of the figure shown in the return of income [section 22 (*1*)].

This method is adopted only in the case of assessees with a more or less unvarying annual income derived from salaries, house property, and sources other than business or profession, where the figure in the return can be verified from employers' annual returns, certificates of deduction at source and municipal registers.

(*2*) Assessment after receiving such evidence as the assessee may produce, or that may be gathered from his books of account or documents relative to the case, in support of the figures in his return and after altering such figures where necessary due to the different methods of computation adopted by the assessee's accountant and the Income-tax Department or otherwise [section 23(*3*)].

These two methods pre-suppose the making of a valid return.

(*3*) *Exparte* assessment, made to the best of the Income-tax officer's judgment.

All assessments are, under the provisions of section 34(*2*) to be completed within 4 years of the end of the year in which the income being assessed was first assessable. When, however, an assessee has been guilty of concealment or misstatement of income, this period extends to 8 years.

B. Production of evidence. Notices calling for evidence are of three kinds—

(i) Asking for the attendance of the assessee and the production by him of any evidence, oral or otherwise, on which he may rely in support of his return [section 23(*2*)].

(*ii*) Compelling the production of books of account and documents specified in the notice. [Section 22 (*4*)].

(*iii*) Special notices, used only in extreme cases in exercise of the powers invested in an Income-tax officer by section 37 of the Act, which authorises him to—

(*a*) enforce the attendance of the assessee or any other person and examine him on oath or affirmation ;

(*b*) compel the production of documents ;
(*c*) issue commissions for the examination of witnesses.

A notice under (*i*) can only be issued after a valid return of income has been made. The assessee need not attend in person but may be represented by a lawyer, auditor or Income-tax consultant, or by an employee or relative competent to answer questions, and whose statements will be binding on the assessee.

Returns and other statutory forms, including the verification clauses, must be signed by the assessee in person, or by some person duly authorised to represent the assessee legally and in such a form as will bind his principal.

A notice under (*ii*) above can be issued—

(*a*) where a special notice calling for a return of income has been issued and the time given for compliance has expired, *whether the return has been filed or not*.
(*b*) where a general notice calling for a return has been issued, and *the return has been duly filed*.

As such, it would appear that a general notice, if not complied with, has to be followed by a special notice and the full period of 30 days for submission of the fresh return allowed, before the Income-Tax officer can call for books and documents relative to the year in question.

The Income-Tax officer cannot of course make an *ex parte* assessment if the general notice has not been complied with.

The Act gives authority for the summoning of books and documents for a period of 3 years "prior to the previous year". As assessments are invariably made on the books and documents of the previous year, to this authority of the Income-tax Officer must be added accounts of the previous year itself and those of the current year under compilation—5 years in all.

Section 34 (re-opening of assessment) permits in certain cases re-opening of assessments after eight years which means in short that the Income-tax officer is empowered to call for books, should need arise, for 13 years! So preserve your old records with care and be prepared at any time to answer questions on matters long relegated to oblivion.

Assessments of 37/38 cannot be reopened. Those of 38/39 can be reopened until 31/3/40. Later assessments can be reopened within 4 or 8 years.

C. Ex Parte Assessments. This is a penalty assessment and is made in cases where a return is not filed within the

time allowed, or where evidence, accounts and documents called for by the Income-tax officer are withheld or not produced, either in whole or in part, on the day fixed [section 23(4)].

Such an assessment, which is invariably in excess of the assessee's actual income, and is more or less intended as a severe lesson to prevent the offence being repeated, can also be made if the return filed is incomplete, though an executive assurance has been given to the effect that capital will not be made of a mistake or oversight due to inadvertence.

Up to 31/3/39 no appeal was allowed to the Assistant Commissioner against these assessments, but this has since been remedied. Further details of appeals possible under such circumstances will be found under the chapter "*Appeals*".

Firms registered under the Income-tax Act particularly stand to suffer by an assessment under this section, as the Income-tax officer has the option of refusing registration or cancelling it where already allowed.

The only clause in their favour is that the Income-tax officer has first to give a notice of 14 days to the firm before the registration can be cancelled.

For details of special procedure adopted in assessing registered and unregistered firms, see under "*Registered Firms*".

Emergency Assessment Provisions. So far, we have studied the normal course of assessment but it is obvious that strict adherence to the procedure laid down is attendant with considerable risk to the Revenue in cases where there is a possibility of an assessment never being finished, and payment of tax totally avoided.

In an attempt to avoid such escapement, certain emergency provisions have been made in the Act. The first (section 24A) covers theatrical and other touring companies and applies also to those about to retire from the country for good, leaving no assets behind from which the tax could be recovered.

The second provision applies to certain classes of shipping, and the third to businesses about to close down.

(*i*) *Touring companies and those about to retire.*—Where the Income-tax officer has reason to believe that such an assessee is about to leave the country for good before the end of the current financial year, or very shortly after, he may serve a notice on him asking for a return of income *within 7 days* from the date of the receipt of notice. The period for which the return of income is to be filed in such cases is normally that between the end of the last previous year and the expected date

of departure. Where, however, it is found that his income of the "previous year", *or of prior years which the Income-tax Officer is competent to assess at the time* (see *Re-opening of Assessments*), was assessable, but for some reason was not actually assessed, he may serve notices on him for such years also, giving the same seven days for compliance.

The usual notices calling for production of evidence (see para. B), and fixing a very early date if necessary, are then issued and separate assessments made for each year, *at the rate applicable to each particular year.*

If no proper accounts are available to enable the Income-tax officer to estimate the income of the current year up to the date of departure, the income for such period is estimated and tax levied accordingly. Failure to comply with notice calling for a return or to produce evidence will of course result in an *ex parte* assessment.

The Act is silent as to what procedure is to be adopted for recovery of tax if the assessee is without funds or assets in the country. Any excess tax paid can, however, be recovered on a refund application being made within the time allowed (see *Refunds*).

It is clear that the foregoing procedure is on similar lines to those of a normal assessment, with the exception of the shorter time given for compliance with a notice calling for a return and the power given to the Income-tax officer to assess the income of the current year.

It should be noted that the onus of discovering such assessees and of putting the emergency machinery in motion is with the Income-tax officer and no provision exists in the Act to compel those about to leave the country to notify the Income-tax Authorities of their intention to do so.

The full period of seven days must be given for filing a return and in the event of the assessee leaving before a week of the receipt of the notice, and leaving no assets, this section is of no avail to the Revenue.

(*ii*) *Certain classes of shipping.*—Sections 44A—C provide for the assessment and collection of tax in such cases, unless the Income-tax officer is satisfied that there is an agent or principal in British India from whom the tax can be collected in the normal manner, and is mainly intended to rope in non-resident owners of such vessels, from whom the tax would otherwise be irrecoverable.

The procedure in this case is rather unusual inasmuch as a return of income has to be made by the master of the vessel,

without the issue of a general or special notice from the Income-tax officer.

The return is also of an unusual nature and consists not of income, but of details of the full amount paid or payable to the master's principal or agent, on account of passenger fares and freight on live stock and goods shipped at the port where the vessel is then lying, from the date of its arrival.

On receiving the return the Income-tax officer calls for any evidence he may require and estimates the income at 5% of the figure returned. The tax is then levied on this percentage at the maximum rate at the time, and the vessel is not allowed to leave the port until the Collector of Customs is satisfied that the tax has been paid.

Any excess subsequently found to have been paid can be claimed by way of refund in the normal course (see *Refunds*) and in the case of under-asessment the tax can presumably be recovered on subsequent visits of the vessel to British India or from any assets of the non-resident principal or agent that subsequently come into British India (see *"Non-Residents"*.)

Such cases will, however, only arise if the principal or agent exercises his option of being assessed in the normal manner in the subsequent year but where the exercise of this option is likely to work to his disadvantage he will probably keep silent, unless any excess tax payable is compensated for by corresponding advantages in the assessment of his other income.

(iii) Businesses about to close down:—See "Discontinuance" *infra*.

ASSOCIATION OF PERSONS

Assessment of an association of persons. There has been a great deal of confusion about the assessment of an association of individuals during the last few years. In Bengal it was held that two or three persons owning a house and deriving rent must be assessed as an association on the total rent. In Bombay it was held that each man must be assessed on his share, with the result that assessees in Bombay who are part-owners of house property in Bengal got assessed twice over. A recent decision in Bombay clarified the position somewhat. It was held that if two or more people were left property, they did not form an association thereby but as soon as they decided to carry on jointly with the administration of the property, they became an association of individuals.

An association of individuals can be members of a club which is not a company, joint owners of house property, joint owners of other property such as a race horse, or members of a firm.

As members of a club they are taxed jointly on such income as is taxable in the hands of a club. They are not taxed again individually on that income but, strictly speaking, their share of the taxable income of the club should be included in their total income for the purpose of fixing the rate. I have never heard of this being done but the fact that the legal liability is there is sufficiently disturbing to members of such clubs.

An association of individuals may own house property jointly. Hitherto there has been uncertainty as to their position. Section 9(3) now lays down that if their shares are definite and ascertainable the association shall not be taxed as such but each person shall be taxed on his share.

An association may run a business, profession or vocation. They form a firm, registered or unregistered, as they decide.

An association runs a race horse or something which cannot be called a business, profession or vocation. They will be taxed as an association. Their share will not be taxable in their own hands but will be included in their total income for fixing their individual rates.

BAD AND DOUBTFUL DEBTS

Hitherto there was no specific provision for these in the Act, bad debts being allowed on the understanding that their non-consideration would not permit of an exact computation of an assessee's income.

A new section, however, has been introduced [section 10 (2) (xi)] giving legal sanction to their deduction. The provisions of the section are self-explanatory. If the assessee's accounting system is cash no bad debts can possibly arise, nor as such can they be claimed as a deduction. Where the system of accounting is mercantile, they are allowable.

Irrecoverable loans are on a different footing. Whether the cash or mercantile system is followed, it is possible that a banker or money-lender may never recover the whole or any portion of any *principal* advanced to a client. Such irrecoverable loans are accordingly treated on the same basis as bad debts, regardless of the accounting system adopted.

The question as to who should be the deciding authority on matters of such allowances has been the subject of much discussion and was hotly debated in the Assembly. It follows, however, that if the final decision rested with the assessee, a surfeit of sums is likely to be written off in a year where there are excessive profits, the same amounts being written back in lean years—particularly when the writing off of a debt in books of account does not operate to remit the outstanding, unless a compromise has been effected between creditor and debtor.

It remains then that the Income-tax officer is the final judge as to whether a debt shown as bad is really so, and as to whether it became really bad in the previous year. The question is one of fact to be decided by a competent tribunal—in this case the Income-tax Officer or the Assistant Commissioner on appeal.

The onus of proof is on the assessee, and the following notes will be of guidance. (See I. T. Manual).

(*a*) The amount must be written off in the accounts.

(*b*) It must be actually "bad".

(*c*) It must have become "bad" in the previous year.

A loan that is legally irrecoverable, even though there is a possibility of realisation from a conscientious or ignorant creditor is "bad".

It is possible for a debt to become bad in less than the statutory period if the debtor dies and leaves no heirs or assets, or leaves the country. Similarly insolvency will operate to make a debt bad.

The instances that can be cited are legion but we reiterate that the facts should be studied in each case and that the debt must be proved to have become bad in the previous year.

Where a business has closed down, bad debts peculiar to it cannot be set off against income from other businesses in subsequent years.

It follows also that any recoveries against a debt once allowed as bad are treated as income and taxed accordingly.

Doubtful debts. These are now allowable and are discussed under the head "Business".

BUSINESS (SEC. 10)

Business, profession and vocation are all now under the same head so that the differences become of very little importance.

The allowable deductions are now stereotyped and comments are offered only on the changes effected.

Trade, profession, or similar associations performing specific services for remuneration definitely related to those services are now taxable on those profits. This means literally that the profit from the sale of a chota peg or a game of billiards is taxable but it is not intended, for the present, to tax social clubs. Income from outside sources is taxable.

Insurance Companies must look to the Schedule.

Allowances.

A. *Rent.*

Rent of the premises used is allowed, on the basis of value of the portion used for business, profession or vocation. Hitherto the proportion was worked out on an area basis. It is now to be worked out on a value basis.

B. *Repairs.*

Actual cost is allowed.

C. *Interest.*

This is allowed if taken for the purpose of the business, etc., but interest paid outside British India is not allowed unless tax at the maximum rate has been deducted at source or unless there is an "agent" for income-tax purposes.

No interest of any sort paid to a partner is admissible.

D. *Insurance.*

All ordinary insurances on the business are admissible but in the case of insurance against loss of profits an undertaking is required that recoveries will be brought into taxable profits.

Workmen's compensation insurance is allowable.

E. *Petty replacements.*

These should be allowed. The Income-tax Officer is usually very sticky about this sort of thing and disallows the pettiest

items as capital, with the result that depreciation claims have to be altered or, as is more usual, depreciation is lost.

Assessees should be more insistent on their rights. Under the new Act, the Income-tax Officer is concerned positively in the fate of each individual item of plant and it is to his advantage to keep the number of items on the depreciation list down.

Some assessees are allowed to charge even motor cars to replacement. Others cannot buy a spade without having it disallowed. A uniform and fairly liberal policy will cost the revenue nothing and will save an enormous amount of trouble.

F. *Depreciation.* See the special chapter.

The new Act covers specifically vehicles, books, scientific apparatus and surgical equipment.

G. *Bad and Doubtful Debts* (Section 10 (2) (xi)).

This allowance is now made statutory. An important departure from normal practice is the inclusion of "doubtful debts". The extended concession, however, is likely to occasion much difficulty in practice. It is possible for a debt to be partly doubtful and partly bad, a fact which is likely to necessitate such a debt being broken up for individual consideration of the parts comprising it.

For example, a debt due from an insolvent who is capable of meeting his liabilities to the extent of only four annas in the rupee would be 25% good and 75% bad. Similarly where for some reason, a debtor is unable to pay in full and a compromise appears to be the only solution, a debt may be first doubtful and then finally bad to the extent of the portion that is likely to be written off. Numerous cases of this mixed nature could be cited.

It is too early to conjecture the exact procedure that will be adopted by the Department in allowing doubtful debts, but possibly the Income-tax Officer's dictum will, as usual, prevail in deciding whether or not a debt is actually "doubtful" in the year of assessment. Cases must also arise in which the "doubtful" portion is allowed in one year and the "bad" portion two or three years later. Subsequent recoveries against a debt once allowed as doubtful are taxable in the year of receipt and any shortfall occasioned by an original over-estimate is allowable as a further bad debt, so it appears that the income-tax Officer and the assessee will both have to keep a record of allowances and postponements under this section. Such

allowances cannot exceed the amount actually written off in the Assessee's book.

Bad debts and irrecoverable loans are discussed under the heading *"Bad Debts" supra.*

H. *Other Expenditure.*

Such expenditure is permissible provided it is incurred or paid wholly and exclusively for the purpose of such business, profession or vocation and is not of a capital or personal nature.

The old law said that the expenditure must be for the purpose of earning profits. This is a radical change though Income-tax Officers at first are likely to contest that statement.

This is the sub-section which always leads to most difficulties in interpretation. It is quite impossible for any book of this sort to deal with this matter comprehensively, and we will confine ourselves to two points.

(*a*) *Payments out of profits.*

There is a definite bar against the allowance of any sum paid on account of cess, rates or taxes levied on profits. Such payments are clearly unconcerned with the earning of profits.

There are, however, many cases in which the payment, though based on profits is nevertheless a payment necessary to earn profits. The most recent example referred to elsewhere and now provided for by the Act itself is the payment of a share of managing agency commission to a second party in return for some benefit or other, usually finance. That is a diversion of income or alternatively an expenditure necessary to earn profits. It all turns on the meaning of the word profits, but the trend of case law is definitely in favour of the assessee and the decision of the Income-tax Officer to treat such a payment as a payment out of profits should not be accepted without careful consideration.

Very strongly in favour of this advice is the new section 23A. Such a payment clearly lessens the power of a Company to pay dividends. Under the old Act, that was a relevant point. Under the new Act, it is not and unless the Department liberalises its views considerably in this respect, they are going to make section 23A completely unworkable. That is a strong argument for saying that the Department's views must be more liberal.

(*b*) *The power of the Income-tax Officer to say whether expenditure incurred is reasonable or not.*

In a well known and fairly recent Bengal case, the High Court decided that the Income-tax Officer was empowered to say that certain directors were getting too much pay. The Income-tax Officer thought a lesser sum was reasonable and allowed that. The High Court held that he had the power to do so.

Whether the directors were in reality overpaid or not is a matter of no moment. What is of more importance is that the logical outcome of this theory is chaos. The Department has been known to decide not only what people they have never seen and know nothing of are worth in terms of salary but also whether a telephone is necessary, whether interest paid on loans is excessive, whether interest charged on loans is adequate, whether too much rent is paid for a premises and whether a business needs to borrow money and whether stocks are disproportionately high. Incredible though it may sound, an Assistant Commissioner solemnly debated whether a concern which was with difficulty and with considerable luck recovering a loan by instalments ought not to be charged tax on interest which they did not charge but which, in his opinion, they might have charged.

From this larger lunacy it is only a short step to deciding whether a business needs marble floors or lifts or electric light and disallowing the depreciation if it is considered not to do so. The Department will soon, if it goes on these lines, have a standard staff based perhaps on turnover. It will decide whether typewriters are necessary, whether postage expenditure is excessive and whether an assessee is paying too much royalty.

The Department, in fact, will teach everyone how to run his business.

As always, however, there is something to be said on the otherside. The Enquiry Committee Report commented on the fact that non-taxable allowances—such as entertainment allowance—were often disproportionate to the salary. The Report suggested that it ought to be possible for the Income-tax Officer to call for details of expenditure for such allowances. The Assembly threw out the proposal. Nevertheless there is clearly something in this grievance.

We venture to make a practical suggestion. It is open to the Income-tax Officer to question whether a certain class of expenditure is admissible at all. If it is admissible it is not open to him to question the amount except in those few cases where the recipient escapes taxation on the amount.

This rule we believe to be entirely sound and easily worked. If an assessee cares to spend Rs. 1,000 a month on rent the Income-tax Officer should not be free to say that a Rs. 100

a month office is adequate. If an assessee cares to spend Rs. 10,000 on Railway fares, it is not for the Income-tax Officer to say Rs. 5,000 was adequate. If a director is given Rs. 5,000 salary, he is liable on it and that is no business of the Income-tax Officer. On the other hand, if he gets a motor car allowance of Rs. 5,000 on which he is not taxable, the Income-tax Officer should rightly go into the adequacy of the allowance.

In that way lies a saner and more acceptable solution of this difficult point.

CASUAL GAINS & ISOLATED TRANSACTIONS

Under section 4 (3) (*vii*) such income is exempt but very little notice has been taken of this exemption in India in the past though there is a fair amount of case law on the subject. Begging profits are not exempted. Punting on the race course is ; police rewards for information are casual ; fees for setting examination papers in his own subject paid to a professor are taxable ; a fee for refereeing at a football match would be taxable in the hands of a professional referee, but not in the hands of a tea taster. Fees for giving evidence would be taxable in the hands of an expert but not in the hands of a casual onlooker. A secretary of a company negotiated the sale of part of the business and got a fee. It was taxable. Proceeds of a benefit match for a cricketer were held not to be taxable but those to a footballer were, a benefit having been provided for in the terms of his engagement. Gratuities paid by the head of a company to the employees after the company had gone into liquidation were held to be non-taxable.

Such are a few of the many rulings and it is clear that no general ruling can be given. Everything depends on the circumstances. The object of this note, however, is to draw the matter to the attention of assessees. Assessees are apt to include all items in their profits regardless of their nature while the Income-tax officer is always ready to disallow claims of the same nature.

Interest on money loaned to friends, perhaps any interest on money loaned when lending money is not the business of the assessee, arbitration fees, fees for casual journalistic efforts, isolated gains in selling land or property. Such items may not be taxable and should be considered with care.

CHANGE OF LAW

New Act whether retrospective. Does the old Act or the amended Act apply to orders passed after 1/4/39 in the case of assessments for 1938/39 or earlier years? The point is far from clear. There are 4 or 5 High Court judgments which have a bearing but they are none of them conclusive. They prove that for income earned in 1938/39, but assessed in 1939/40 the new Act applies. That would seem to go without saying. The principles of these decisions would seem to indicate that Income-Tax officers must be guided by the law as it exists at the time of passing the order irrespective of when the income was earned and irrespective of when it ought to have been assessed but they do not state that explicitly.

The Department is working on the assumption that to 1938/39 and earlier assessments the old law applies. That is a very doubtful point and it is certain to go to Court before long. The main, and perhaps the only argument in favour of it is the equity argument. It is clearly inequitable that one assessee should be assessed on one basis while another should be assessed on a different basis because his assessment was delayed.

On the other side are the following arguments.—

1. In the Amendment Act XII of 1933, the specific date of application was made clear.

In Act XVIII of 1933 there was no such specific date and the Act came into force at once.

2. If it is clear, *ipso facto*, that the amendments can apply only to 1939/40 and later assessments, why is it necessary to make the point clear in various special sections?

3. Is it possible that the Income-tax Officers should be administering two laws?

If part of a section has been omitted can it really continue in existence for the older assessments?

4. Case law changes come into effect at once, but that is a weak argument. Case law is normally a change in interpretation only.

5. It is particularly difficult to say that section 34 as amended has no reference to old assessments. If so, why not the other sections?

The matter is highly technical but assessees whose 1938/39 or earlier assessments have not been completed should bear the point in mind. It may pay them to take it up.

The matter becomes still more difficult when a 1938/39 assessment is reopened under section 34 or when an application for registration is made after 1/4/39. Is it really possible to say that the new law does not apply?

Altogether a most doubtful point. The official view will be that the new law applies on matters of procedure, the old law in fixing the quantum.

CHANGE OF CONSTITUTION & SUCCESSION

(SECTIONS 25A & 26)

The general principle of the new Act is that assessees should pay on the profits they have actually made.

Hindu Undivided Families partitioned. If at the time of assessment the Income-tax officer finds that a family has been divided he is to record an order to that effect. It should be noted that the old proviso that he should be satisfied that the property has been physically partitioned, has gone. If for the whole of the previous year the Hindu undivided family was in existence, the Income-tax officer calculates the income of the Hindu undivided family and the tax payable on it and each member is liable for his particular share as indicated by the partition deed and in addition they are all jointly and severally liable for the whole tax.

An assessee's share of the Hindu undivided family income is not added to any other income for getting a higher total income. It is kept entirely separate. If the partition has taken place during the previous year, say after 6 months, then the Income-tax officer has to work out the tax liability of the Hindu undivided family for 6 months and divide the tax liability (not, note carefully, the assessable income) among the members according to their share in the partition deed and then he has to work out the liability for the last 6 months and tax the assessee as an association of persons (*e.g.* in the ownership of a race-horse) ; or as a firm, registered or unregistered in the case of a business, profession or vocation ; or as individuals if their assets are separated or on their specified share in income from house property if they are an association of persons owning house property.

Hindu Undivided Families converted into a partnership. When a Hindu undivided family carrying on a business, profession or vocation turns itself into a firm, the above noted procedure holds. The Hindu undivided family is assessed as such up to the date of partition and the tax is divided amongst the members. The succeeding firm pays on its share of the profits as a registered or unregistered firm as the case may be.

Change in Constitution of a Firm. This applies to changes in the personnel of the partners. Speaking broadly,

if on any change one or more of the old partners remain, it is a change in constitution. The profits of the previous year are allocated to the partners who were entitled to receive them. If one of the old partners cannot pay, the tax can be recovered from the firm as newly constituted.

Succession. Here again, the profit which the predecessor was entitled to is taxable in his hands and the successor pays on the profits he was entitled to.

In this case the successor can, if his predecessor cannot be found, be assessed for the part of the year up to the date of succession and for the year previous to that or if his predecessor cannot pay for those periods the successor has to pay.

But if the predecessor has not been assessed for earlier periods or having been assessed has not paid, the successor has no liability.

For instance, if the accounts are made up by the year ending 31st March and the succession takes place on 1st October 1940, for the year 1941/42 the predecessor will be taxed for 6 months and the successor for 6 months and the successor is liable to be assessed or to pay any tax imposed for the year 1940/41 based on profits for year ending 31/3/40.

The successor can recover from the predecessor any tax he has paid on his behalf.

The principle is clear enough but some difficult cases will arise.

Suppose on 1st October 1939 A is succeeded by B and on 31st October 1940 B is succeeded by C. The assessment for 1941/42 on 12 months ending 31/3/41 is half on B and half on C and the assessment of 1940/41 is half on B and half on A, and C has succeeded B and is liable for him but is C liable for A's share of 1940/41 assessment if B who is really liable cannot be found?

CHARITIES [SEC. 4 (3)]

The most important change here is the alteration in the definition of charitable purpose. It now excludes that part of the income of a private religious trust which does not enure for the benefit of the public (section 4(3) at end). This seems to have caused a good deal of anxiety but it was made clear in the Assembly by the Finance Member that it was not intended to refuse exemption to charities set up for one community or class. All that is intended is to exclude from the exemption purely private charities.

What is exempted is—

1. Income from property under trust or other legal obligation wholly for religious or charitable purposes or such part of the income as is applied or set apart for such purposes.

2. Income from business carried on on behalf of a religious or charitable institution where the income is applied solely to purposes of the institution, and the business is one of the primary purposes of the institution or the work is carried on by beneficiaries.

3. Any income of a religious or charitable institution from voluntary contributions and applicable solely to religious and charitable purposes.

CLUBS [SEC. 10 (6)]

This section makes taxable income of a "trade, professional or similar association" performing specific services for remuneration definitely related to those services.

That covers charges for billiard tables or the purchase price of drinks.

Whether an ordinary Social Club is covered by the term "professional or similar association" is a matter of some doubt but at the moment there is no intention of attacking social clubs.

Such clubs, however, pay on the annual value of their house property if they own their club building. The validity of this has not been challenged but was exceedingly doubtful since the proceeds of letting of furnished rooms is certainly income from business. However, most officers worked on the actual proceeds which is much more favourable to clubs than the municipal assessment. Under the new section 9, clubs are certainly liable on their house property as their business is not assessable.

The assessment of sweepstake profits is becoming general and here too all depends on the conditions under which the sweepstake is run. Sale of tickets to outsiders must attract the attention of the taxing authorities.

Any profits from outside sources, *e.g.*, profits on a race meeting to which the public are admitted, green fees on golf courses charged to non-members or profits from public entertainments all attract tax.

Strictly speaking each member of a club should have added to his total income his share of the assessable profits but this is, quite rightly, never attempted. This does not, of course, apply to members of clubs limited either by share or by guarantee.

COLLECTION OF TAX

Power to collect tax. The Income-tax Officer is the Departmental bill collector and is responsible for recovering all demands, whether made as a result of his own order of assessment or that of an Assistant Commissioner or the Commissioner of Income-tax in appeal or review, or for a penalty imposed.

As not all assessees can or will pay on due date, he has been given special powers to assist him in bringing in the revenue. These powers vary from the simple threat of a fine, that usually hurries the nervous assessee to his bankers or to the nearest money-lender—to drastic machinery, driven with the full support of the powers that be, against the obstinate one who just will not pay.

Bad debts are almost unknown to the Department—an ominous statement and one not without significance for the assessee who has squandered his previous year's substance and made no provision for the day fixed by the Income-tax Officer.

Notice of Demand. Section 29 enjoins that the Income-tax Officer should issue a demand notice to the assessee for any sum found payable by way of tax or penalty under the Act. This notice is in the form of a summary showing how the tax has been computed and what allowances, etc., have been granted. On the reverse of the form, the attention of the assessee is drawn to the fact of there being an Assistant Commissioner to whom an appeal may be addressed within 30 days if the assessee is "dissatisfied" with the figure demanded.

Time limit for payment of demands. There is unfortunately no statutory provision in the Act, laying down the minimum period to be allowed for payment. During the discussion of the Amendment Act, it was sought by certain members of the Assembly to bring in some such provision, but the proposed amendment was withdrawn on an assurance given by the Finance Member to the effect that Income-tax officers had been instructed to allow a minimum of 14 days for payment, except in cases involving a risk to the Revenue.

Assessees are generally harrassed towards the end of the financial year, when the Income-tax Officer is anxious to make his collections before the 31st March. As such, this assurance by the Finance Member is in a measure, comforting.

Section 45 (*1*) states that a demand must be paid on the date given by the Income-tax Officer, but that where no date

is specified, the tax should be credited "on or before the first day of the 2nd month following the date of service of the demand or order."

Where an appeal is lodged, the Income-tax Officer is authorised to withhold demand for payment until the appeal is disposed of. This is, however, seldom done in practice, but as a result of a recommendation by the Enquiry Committee to the effect that this power should be more widely exercised (Report, page 52), it is possible that future applications for stay of tax by appellants will be more sympathetically considered. Section 66 (7) provides that a reference to the High Court does not stay the collection of tax.

Representations made to the Enquiry Committee for payment by instalments proved unsuccessful but an assurance has been given to the Assembly by the Finance Member to the effect that the question will be favourably considered in cases where a heavy demand, extending possibly over a period of years is made under section 34. A similar assurance was given to cover cases where, as a result of exchange restrictions, several demands are held up and become payable at one time. (Assembly Debates, page 4240).

In all fairness to the Department, however, it should be mentioned here that most officers are very lenient in cases where genuine hardship exists, provided there is no accompanying risk to the Revenue.

As a result of the exchange restrictions that exist in Germany and other countries to-day, a new proviso to section 45 permits of an assessee who has been assessed on his foreign income in such countries, as not being in default until such time as the restriction is wholly or partly removed. This concession applies, however, only to that portion of the tax due from him as is in respect of that amount of his foreign income which cannot, due to the restriction, be brought into British India. The words "brought into British India" have been made the subject of a special explanation, and the following extract from Mr. Chambers' speech will throw some light on the matter. (Assembly Debates, page 4239) :—

Mr. S. P. Chambers : "The object of the Explanation is to deem to be remittances to British India what we call in the United Kingdom constructive remittances; that is to say, if instead of bringing the money into British India and spending it here, I spent it on a holiday in the country where I made the profits or somewhere else abroad, I used that money and I cannot bring it again into this country. And we say in that case that we must deem that to have been brought into this country for the purposes of this section. Clearly, in such a case the existence of any restriction on bringing the money into British

India is completely ineffective if I use that money for any expenditure which I actually incur or if I bring the money into British India in forms other than money itself. If I buy securities and bring them here, I am bringing profits or income into British India in some other form. I do not know whether any further explanation is required."

A further concession provided executively by the Finance Member in the Assembly (Assembly Debates, page 4240) is to the effect that, if during the period of non-remittance, there are losses incurred by exchange depreciation, these losses will be allowed in the year as they accrue against the profits of the year.

Collection. *A. Fines.*—Non-payment of tax on or before the due date, leaves the assessee open to the imposition of a penalty as great as the amount of tax due from him. In short, he may be called on to pay *twice* the tax demanded. In practice, however, and assisted by the special wording of Section 46 (*1-A*), the Income-tax Officer levies a small penalty at first, and increases the figure gradually where the default continues, until in the case of the seasoned defaulter, the maximum is reached. The maximum penalty is limited to twice the outstanding arrears.

B. Attachments, Distress Proceedings.—Section 46 (*2*) provides for cases in which no whole time staff is employed by the Income-tax Department for the collection of arrears. In such cases, the Income-tax Officer may enlist the aid of the Collector of the District in recovering the demand. The Collector, on receipt of a certificate from the Income-tax Officer specifying the amount due, will then proceed to recover the tax as if it were an arrear of land revenue. It has been held, however, that these powers do not make "arrears of tax" synonymous with "arrears of revenue", and where a mortgaged property is sold as a result of an Income-tax default of one of the co-sharers, the tax could be recovered only from the defaulter's share and not from those of the others.

The proviso to this sub-section also gives the Collector the power to attach and sell a debt due to a defaulter. In practice the Certificate Method of recovery is followed without a suit being filed. All that is necessary is for the Commissioner of Income-tax to initiate proceedings within one year of the end of the financial year in which the demand is made. The proceedings need not necessarily be terminated within that period.

Sections 46 (*3*) and 46 (*4*) apply to arrears where a special Income-tax staff for recovery of arrears is employed. The Commissioner of Income-tax is authorised to confer on such

a staff any of the powers in force in his Province at the time for recovering a municipal tax or local rate. The section is clear on the point that without the Commissioner's sanction, any action taken by the Income-tax Officer is *ultra vires*.

Section 46 (*6*) states that where the recovery of tax has been entrusted to a Provincial Government, under Section 124 (*1*) of the Government of India Act, the Provincial Government may direct that in respect of that particular area, the tax may be recovered along with and in addition to, any municipal tax or local rate, and after the same method.

Attachment of Salary. Where the defaulter is a salaried person, the Income-tax Officer may order his employer to deduct the tax from his salary and credit it after the manner of tax deducted at source, or any other method. [Section 46 (*5*)].

Company Winding Up. Section 230 of the Indian Companies Act reads as follows: ---

"(*1*) In a winding up there shall be paid in priority to all other debts—

(*a*) all revenue, taxes, cesses and rates, whether payable to the Crown or to a local authority, due from the Company at the date hereinafter mentioned and having become due and payable within the twelve months next before that date ;

(*b*) all wages or salary of any clerk or servant in respect of service rendered to the Company within the two months next before the said date, not exceeding one thousand rupees for each clerk or servant ;

(*c*) all wages of any labourer or workman, not exceeding five hundred rupees for each, whether payable for time or piece-work, in respect of services rendered to the Company within the two months next before the said date ;

(*d*) compensation payable under the Workmen's Compensation Act, 1923, in respect of the death or disablement of any officer or employee of the company ;

(*e*) all sums due to any employee from a provident fund, a pension fund, a gratuity fund or any other fund for the welfare of the employees maintained by the company ; and

(*f*) the expenses of any investigation held in pursuance of clause (*iv*) of section 138 of this Act.

(*2*) The foregoing debts shall—

(*a*) rank equally among themselves and be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportion ; and

(*b*) so far as the assets of the Company available for payment of general creditors are insufficient to meet them, have priority over the claims of holders of debentures under any floating charge created by the Company, and be paid accordingly out of any property comprised in or subject to that charge.

(3) Subject to the retention of such sums as may be necessary for the costs and expenses of the winding up, the foregoing debts shall be discharged forthwith so far as the assets are sufficient to meet them.

(4) In the event of a landlord or other person distraining or having distrained on any goods or effects of the Company within three months next before the date of a winding up order, the debts to which priority is given by this section shall be a first charge on the goods or effects so distrained on, or the proceeds of the sale thereof :

Provided that in respect of any money paid under any such charge the landlord or other person shall have the same rights of priority as the person to whom the payment is made.

(5) The date hereinbefore in this section referred to is—

(*a*) in the case of a Company ordered to be wound up compulsorily which had not previously commenced to be wound up voluntarily, the date of the winding up order ; and

(*b*) in any other case, the date of the commencement of the winding up."

Where a business is discontinued, however, or where there has been a succession, Sections 25 and 26 will apply. (See *"Discontinuance, Business and Succession", infra*).

Time Limit. The period for payment of a demand in cases where no date is specified on the demand challan is "on or before the first day of the second month following the date of the service of the notice or order". A note on this and the special provisions relative to assessees in countries where exchange restrictions exist, is given above in this chapter.

The first proviso to Section 42 (*1*) sets out that any arrears of tax due from a person not resident in British India may be recovered in accordance with the provisions of the Act from any assets of the non-resident which are, or *may at any time come* within British India.

In all other cases, proceedings for collection of arrears shall be commenced within one year from the end of the financial year in which the demand relative to the arrears was made.

Penalties. Section 47 extends the scope of sections 45 & 46 and makes monetary penalties recoverable in the same manner as arrears of tax. Presumably, *arrears* of such penalties are only intended to be so collected.

Miscellaneous. Under section 62, a receipt is to be given for all monies paid or recovered under the Act.

Section 36 limits collections to the nearest anna, by disregarding fractions of a demand below six pies and treating those of six pies and over as one anna.

Section 65 indemnifies any person deducting, retaining or paying any tax under the provisions of this Act for the deduction, retention or payment thereof.

COMMERCIAL TRAVELLERS

These resemble visitors largely and seldom stay the 6 months necessary to make them residents but section 4A(*a*) (*iii*) may affect them.

A man becomes resident if during the four years preceding he has been here for 365 days or more and is here for any period otherwise than on an occasional or casual visit. Business trips cannot be called occasional or casual.

The man who returns and continues to visit the Indian branches, therefore, continues to be a resident (and incidentally ordinarily resident too) for 4 years at least.

If commercial travellers depend for their living on a percentage of sales, it has been held that selling to dealers in British India on behalf of manufacturers in the U. K. is a business the profits of which accrue partly in India and partly in the U. K. How much in each country is a question of fact to be determined in each case but a rough and ready 50/50 argument is likely to succeed. The taxability of that sort of income is independent of the status (resident or non-resident) of the assessee. It is taxable in any case.

Many travellers, however, are remunerated either wholly or in part by fixed sums, monthly or annual, paid by the manufacturer.

That is not income from profession or vocation set up in India. The profession or vocation is set up in the U. K. but if a traveller is paid £30 a month and one of the conditions is that he should spend 2 months a year in India, does that income accrue or arise in India?

If it does, he pays on it whatever his status. If not, he is treated in the same way as a visitor.

The correct answer seems clearly in the negative.

See also "*Visitors*".

COMMISSIONER, POWERS OF (SEC. 33)

The Commissioner has power to call for any records and pass orders as he thinks fit, subject to the provisions of this Act.

He must give an assessee a hearing before passing orders prejudicial to him and in the case of a prejudicial order the assessee can go to the High Court [Section 66 (2)].

What is meant by a prejudicial order has for years been settled. Any order putting an assessee in a worse position than he was before the Commissioner passed orders was considered prejudicial. Unfortunately a full bench decision of the Madras High Court has ruled that a negative order refusing to interfere or to do anything at all is a prejudicial order and permits a reference to the High Court. Presumably an appeal will be made to the Privy Council against that ruling and other provinces will not follow it unless they are compelled to by their own High Courts.

The Commissioner will not interfere after one year from the order complained about. That is not the law but an executive instruction. If he refuses in Madras, presumably, the authority of the High Court can be invoked but assessees will agree that an application should be made reasonably within one year.

Government has promised to set up a Tribunal within 2 years to hear appeals from the Assistant Commissioners on law as well as on facts. This will be intermediate between the Assistant Commissioners and the High Court. There is talk of there being no need of the discretionary powers of the Commissioner once that Tribunal is set up but no experienced practitioner is likely to support that view. The Amendment Act as framed, however, removes the powers of the Commissioner. See under *"Appellate Tribunal"*.

In spite of all attempts to clarify the law and to make it cover all cases, there will always be a residue of cases in which the needs of justice are plain and yet which cannot be rectified by an action of an Income-tax officer or an Assistant Commissioner. Section 33 is the only section which permits the play of common sense. Common sense has no real place in an Income-tax Act. On the whole, assessees are better off

for that but it cannot be excluded entirely and its proper repository is the hands of the Commissioner.

Quite apart from anything else, when his assistants have committed an obvious mistake he can save the Department and assessees a lot of trouble by putting matters right.

COMPANIES

The respective advantages of branches and Indian Companies. United Kingdom companies often have to consider the relative advantages of setting up a branch office in India or starting a separate Indian company.

As far as the income-tax aspect goes, the following is the position.

In the case of a separate Indian company, section 42(2) has a vital bearing. It is inevitable that there should be an enquiry into the price at which goods are supplied by the present company. If those prices are low, no objection is raised but if they are high, a very difficult series of enquiries is set on foot.

If a branch of the parent company operates with its own Indian accounts, the same difficulty about the price at which supplies are entered crops up though in a less acute form since the manufacturing cost is the cost which has to be obtained and that is a figure less difficult to determine than a fair price or a market price.

In the case of a branch maintaining no separate Indian profit and loss account, the assessment is made on a proportionate basis. The world profits are deduced from the main accounts worked out on an Indian basis and the Indian profits are worked out on a proportionate basis. That involves no difficult calculations and from the point of view of simplicity, it is best to keep the Indian business a branch without separate profit and loss accounts. The more important aspect of the matter, however, is re. taxation.

An Indian company pays income-tax and super-tax on its profits. The parent company is a shareholder and on the dividends it receives pays U. K. tax, recovering the Indian income-tax through the Double Income-Tax Relief procedure. The Indian company super-tax is not recoverable.

With a branch office, it is the parent company itself which is being taxed and all tax paid in India is recoverable through the Double Income-Tax Relief procedure.

Further, in the case of a branch, any losses in India go automatically to reduce the U. K. assessment. With a separate Indian company that is not so.

Still further, it would appear that if a company controlled abroad loses less in India than it does abroad, it must, for that year at any rate, be classified as a resident company under section 4A.

That being so, foreign losses will be added to Indian losses for the carry forward. That, however, is a small point since the Double Income Tax Relief arrangements make it immaterial to a U. K. Company what the Indian tax is.

Again, an Indian company will be taxed on its profits in the Indian States and has to get the relief due. A branch of a U. K. company, not being resident, is not taxed on its Indian State profits.

For all these reasons it is clear that as far as income-tax goes it is better for a sterling concern to work in India through a branch office than to establish a separate Indian company.

COMPANY OR FIRM

In the assessments of 1939/40 and onwards, the exemption of Rs. 50,000 from company super-tax has been abolished and the continued argument as to the respective merits of a registered firm or a company for income-tax purposes has to restart on a new basis. The following table gives the total tax payable by an individual, a company and a registered firm with two to four partners :—

Profits	Individual Tax	Company Tax	Registered Firm of : 2 partners	3 partners	4 partners
Rs.	Rs.	Rs.	Rs.	Rs.	Rs.
10,000	555	2,187	328	258	187
20,000	1,961	4,375	1,109	882	656
30,000	3,836	6,562	2,359	1,664	1,437
40,000	6,334	8,750	3,922	2,914	2,228
50,000	9,148	10,937	5,484	4,320	3,469
60,000	12,273	13,125	7,672	5,883	4,648
70,000	15,711	15,312	9,859	7,446	6,281
80,000	19,148	17,500	12,672	9,316	7,844
90,000	22,586	19,687	15,484	11,504	9,406
100,000	26,023	21,875	18,297	13,691	10,969

The position as regards companies, however, must be carried further because under section 23A a company must declare its profits as dividends or if it does not the Income-tax officer will deem them to be declared and will levy super-tax accordingly.

On the assumption that all the profits are distributed with the exception of what is required to pay the company super-tax, the refunds obtainable in toto by 2, 3 or 4 equal shareholders are approximated as follows. The net outgoing tax is also shown.

Companies.

Profit	Company Tax	Recoverable by 2 shareholders	Net	Recoverable by 3 shareholders	Net	Recoverable by 4 shareholders	Net
Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.
10,000	2,187	1,166	1,021	1,236	951	1,308	879
20,000	4,375	1,918	2,457	2,145	2,230	2,336	2,039
30,000	6,562	2,270	4,292	2,880	3,682	3,108	3,454
40,000	8,750	2,326	6,424	2,958	5,792	3,836	4,914
50,000	10,937	2,326	8,611	3,489	7,448	4,248	6,689
60,000	13,125	1,936	11,189	3,489	9,636	4,540	8,585
70,000	15,312	1,350	13,962	3,489	11,823	4,652	10,660
80,000	17,500	452	17,048	3,489	14,011	4,652	12,848
90,000	19,687	Pay 720	20,407	2,904	16,783	4,652	15,035
100,000	21,875	,, 1,892	23,767	2,316	19,559	4,652	17,223

Company super-tax, in short, goes and is not recoverable in the hands of the shareholders. That explains the difference between, *e.g.*, 4 equal partners in a registered firm and 4 equal shareholders.

That does not necessarily dispose of the matter in favour of the registered firm and against the company because a company has other advantages.

Until a company has accumulated reserves equal to its capital and loans, it cannot be compelled to distribute more than 60% of its profits. With a registered firm, all the profits are liable to income-tax and super-tax in the hands of the partners. With a company, the undistributed profits do not attract personal super-tax unless section 23A is applied.

Consider a firm with profits of 1 lakh and three partners. The partners pay Rs. 13,691/- tax altogether.

A company with the same profits pays Rs. 21,875/- but if it distributes Rs. 60,000/- to Rs. 75,000/- gross dividends, the shareholders will not pay super-tax and will each get Rs. 1,163/- refund or Rs. 3,489/-, making the net tax for the company and the three shareholders Rs. 18,386/- against a net tax of Rs. 19,559/- if all the profits are distributed.

If the profits are big, say Rs. 3,00,000/-, the position works out as follows:

Registered firm, three partners. Tax on Rs. 1,00,000/- each is Rs. 26,023/-. Total tax Rs. 78,069/-. Tax on company is Rs. 65,625/-. If 60% of profits are declared as dividend, each shareholder will pay super-tax on Rs. 60,000/- or Rs. 4,056/-, and get a refund of Rs. 1,163/- on income-tax, making net Rs. 2,893/- payment or Rs. 8,679/- for the three. Thus, with a company they will pay Rs. 74,304/- against Rs. 78,069/- as a firm.

Another set of considerations must also be taken into account.

When a company is formed, the shareholder-directors are servants of the company. They can be paid a salary. If they lend money to the company, the company can treat the interest on that money as an expense whereas in the case of firms any salaries paid to partners or interest is disallowed in the assessment of the firm.

In the case referred to above of a company with a profit of 1 lakh, neglecting any payments to directors or shareholders, it is probable that assessment would be made on (say) Rs. 64,000/- after allowing Rs. 12,000/- a year each for salary

to three director shareholders. After paying super-tax of Rs. 4,000/- on Rs. 64,000/- the company could distribute Rs. 13,000/- each to the shareholders as dividends. The tax on the company would be:

Super-tax	...	Rs. 4,000/-
Income-tax	...	,, 10,000/-

Each director would be liable to tax on Rs. 25,000/-, *i.e.*, Rs. 2,742/- but would get credit for the tax paid on Rs. 13,000/-, *i.e.*, Rs. 2,031/-. So each director would have to pay net Rs. 711/-.

Thus, the total amount payable would be Rs. 14,000/- for the company and Rs. 2,133/- for the directors, or Rs. 16,133/- in all.

In the case of a company, there is not the same amount of argument as to the admissibility of expenses. The separation of the entity of the company from that of the shareholders or directors stops many of these arguments and there is still perhaps something to be said in favour of a company in spite of the heavy extra burden put upon them by the abolition of the super-tax free limit. It all depends on the individual case.

COMPULSORY PAYMENT OF DIVIDENDS.

Non-distribution of 60% of profits as dividends. The old law on this subject proved to be almost useless. The Income-tax Officer, under that law, had to determine whether profits and gains were being accumulated by a company unnecessarily. Under the new law, the boot is on the other leg. If a company does not distribute 60% of its assessable profits as dividends, the Income-tax officer must assume that all the profits have been distributed and notify those officers who tax the shareholders unless he is satisfied that having regard to previous losses or the smallness of the profits made, the payment of a dividend or of a larger dividend would be unreasonable. Further, when the accumulation of past profits, excluding those profits which have been deemed to have been distributed by an order of the Income-tax officer under this section, exceed the paid-up capital of the company together with any loan capital which is the property of the shareholders or the actual cost of the fixed assets of the company, whichever is greater, then the Income-tax officer must take action unless all the assessable income of the company is distributed in the form of dividends.

How this is going to be possible when the company has to pay its own super-tax of -/1/- in the rupee remains to be seen.

Distribution of not less than 55% of profits. The law also provides that if a company has distributed not less than 55%, it shall get a warning from the Income-tax officer and can within 3 months distribute another 5% so as to avoid the Income-tax officer taking action under this section.

This law does not apply to those companies in which the public is substantially interested, that is to say, a company in which 25% of the shares are held by the public. Nor does this law apply to subsidiaries of public companies (section 23A).

Failure to distribute 60% or 100% of profits as dividends. The law now becomes semi-automatic. Failure to distribute 60% or 100% as the case may be, of the assessable income brings this section into action but it is very clear that the section is going to cause great trouble in certain cases.

The following points may be considered—

1. If a company gives away a large slice of its income in charity it cannot distribute the dividends. If it is possible, however, for the charity to be made a shareholder it can get its money in the form of dividends and will then get a further amount in the shape of a refund.

2. There are various companies in which amounts of expenditure are disallowed. One well known case is the case of a company in which there were three shareholders and all three shareholders drew salaries as directors. The Income-tax Department refused to allow the full amount of salaries drawn and part of the salaries were added back to the assessable income of the company. In such cases, the company probably cannot distribute 60% of its assessable income and certainly cannot distribute 100%.

The result of this section will be to assume that the three shareholders have got 20% or 33%, as the case may be, of the assessable income of the company and of course it will be impossible to assume that they have received that part of the salary which is added back although certainly tax had already been deducted on that salary and credited to Government.

In such cases the calculation of the proper tax and the proper refund will be of very considerable inconvenience to the Department and to the assessee.

3. In any case, it is not the assessable income which can possibly have been distributed but only the assessable income less the company's super-tax. This is a point which clearly needs rectification.

4. Section 23A (4) provides that when distributed profits and gains are taxed in the hands of shareholders and such profits and gains are distributed in any later year, the proportionate share therein of any member of the company shall be excluded in computing his total income in that later year. Is, however, a shareholder to get credit in that later year for tax deducted on these dividends?

5. It may very well happen that a company has made good profits and yet has not got the wherewithal to declare a dividend, particularly if its accounts are kept on the mercantile system. It may have carried out some big piece of work for Government for payment in two or three years time. The payment of a dividend may be an absolute financial impossibility but the Income-tax officer is precluded from considering that point. He can only consider previous losses and the smallness of the profit. In a United Kingdom case where the

managing director, and practically the sole shareholder, was a debtor of the company, it was held that a dividend could be declared by set off. That is common sense but in the case considered here that means of paying a dividend may not and probably is not available.

Further points to note in this connection are that a company has six months after the accounts are laid before the general meeting, to distribute dividends if it wishes to avoid action under this section.

No order under this section can be passed until the inspecting Assistant Commissioner has given the company a hearing.

CO-OPERATIVE SOCIETIES

The profits of these were exempted from both income-tax and super-tax by Notification under the old Act and this exemption until cancelled continues to have statutory effect.

The exemption applies to all co-operative societies with the exception of the Sanikatta Salt Owner's Society, Bombay Presidency, as also to dividends or other payments received by members of such societies.

It should be noted that the word "profits" as here used, does not embrace interest on securities, dividends, house property and income assessable under section 12 (*Other Sources*) —See also under these heads.

Societies whose total income is not taxable at the maximum rate or whose income is below the assessable limit should apply to the Income-tax Officer for an exemption certificate enabling them to have tax deducted at source at the appropriate rate or not deducted at all, as the case may be.

Any loss of income incurred by a society under a head of income exempted by notification (see I. T. Manual), can be set off against any other income not so exempted.

Such profits, though exempt, are included in Total Income for rate purposes.

Attempts have been made in the past to make these societies pay super-tax on their taxable income at an undue rate.

Suppose a Co-operative Society has mutual income of Rs. 40,000 and taxable income of Rs. 20,000. The super-tax was worked out on Rs. 60,000. It was held that two-thirds was exempt and so one-third of the tax was payable. This method was undoubtedly wrong.

Of the Rs. 60,000 income, Rs. 40,000 is exempt by notification and the first Rs. 30,000 was exempt by the Finance Act, so no super-tax was payable.

Co-operative Societies which are not registered under the Indian Companies Act suffer heavily in the matter of super-tax, they being on the graduated scale applicable to individuals. The Finance Member promised to consider their case but Societies should not rely on that promise. They should consider turning themselves into Companies.

DEAD PERSONS (SEC. 24B)

Executors administrators or other legal representatives are liable to pay to the extent to which the estate is capable of meeting the charge.

The Income-tax officer can issue all the necessary notices to the executor etc., and can also continue from an intermediary stage.

For example, if a return has been filed and the assessee has since died, notices calling for evidence etc., may be served on his heirs.

This applies also to notices re-opening an assessment and is likely to create hardship in cases where proceedings are commenced in connection with what the Income-tax officer considers "wilful concealment". Such an allegation can but be answered by the party who filed the return originally and in the absence of complete facts the heirs may be penalised for an "offence" which in all possibility could very easily have been explained away but for the untimely death of the only person competent tc give evidence.

Similarly with refunds. Section 49F authorises an executor, administrator, or other legal representative to claim a refund that would but for his death have been payable to an assessee.

DEDUCTIONS AT SOURCE (SEC. 18)

The following deductions must be made :—

	Resident	Non-resident
Salaries.	(a) Appropriate rate of income-tax and super tax.	(b) Maximum income-tax, appropriate super-tax.
Interest on securities other than Tax free securities.	(c) Maximum income-tax.	(d) Maximum income-tax.

In cases (*b*) (*c*) and (*d*) the Income-Tax officer can give a certificate authorising the deduction of income-tax at less than the maximum rates.

In the case of salaries paid to residents the employer can adjust any excess or deficiency in the next deduction but adjustments must be confined to the current year. He cannot however give a refund.

Other interest or other sums chargeable.	(e) Maximum rate of income-tax unless payer is an agent u/s 43.

In this case, the Income-tax Officer can order deduction of super-tax at a rate specified by him as being appropriate to his total world income and, in any case, if the amount paid by the payer is large enough to attract super-tax, the payer must deduct tax at the rate appropriate to the payments made if he has not reason to believe that the recipient is resident.

Dividends.	Income-tax is paid by Company and credit given in assessment of shareholder.
Dividends.	Appropriate rate of super-tax must be deducted by payer if he has not reason to believe that shareholder is resident.

The Income-tax officer can order deduction of S. T. on dividends at higher rate, if he desires, in case of non-residents. It will be based on the gross figures, of course.

All these sums deducted are counted as income received in the assessment of the payee. All sums deducted must be

paid over to Government within the prescribed time. This is at present 7 days but owing to the largely increased scope ot this section, extensions of this period for banks or other big payers seems probable.

These sums when deducted are given credit for to the payee in the payee's next assessment. Payers deduct under the authority of this section and are acting as agents of the Government. It is no concern of the payee whether the money is paid over to Government or not and once the deduction is made the payee is free of liability to that extent and indeed must be given credit for the amount deducted in his next assessment.

The person responsible for payment and in the case of deduction of super-tax on dividends the Company paying the dividends are in the case of failure to deduct made responsible as assessees and if the failure to deduct is held to be wilful they are liable to penalties equal to the amount of the tax and to prosecution. See section 51 (a).

It should be noted that the responsibility, except in the case of super-tax on dividends, is a personal one. The employing company or firm cannot be forced into responsibility. This was the state of the law under the old Act though Income-tax officers were sometimes inclined to contest the point. The specific responsibility of the Company in the case of super-tax on dividends has the effect of making clearer the personal responsibility of the person paying in other cases.

With the introduction of the definition of resident, this section now offers many difficulties. How is the payer to know who is resident and who is not? The question of residence offers many difficulties which a payer cannot solve and indeed has no information about. A resident within the meaning of section 4-A may be out of India for a considerable time and may demand payment out of India. A non-resident may be in India. A Company may be resident one year and non-resident the next. In these difficulties, the section affords the payer no guidance and it seems safe to say that it will be altered before long.

It will be noticed that section 18 (3-*A*) says that tax must be deducted on interest and other chargeable amounts if the payment is to a person not resident, whereas sections 18 (3-*C*) and (3*E*), which deal with the deduction of super-tax, enjoin deduction if the payer "has not reason to believe that the recipient is resident."

The reason, if any, behind this difference in wording is not clear, to the writer at any rate.

Apparently, a payer must know that the recipient is non-resident before he can deduct income-tax but if he is lacking in all knowledge, must deduct super-tax in certain cases. Caution is indicated.

This section 18 must be read with sections 8, 10 (2) (*iii*) and 10 (4) (*a*). This interest and salaries "payable outside British India" are not allowable as expenses unless tax has been deducted or, in the case of salaries, has been paid provided the recipient is chargeable.

Here again there is a difference in wording.

Until the position is clarified, it would seem common sense to deduct only on what is payable outside British India. Under section 18 the payer can at any rate plead ignorance of whether the payee is a non-resident or not and if the payee is a Company controlled abroad, that plea is clearly inevitably correct because the Company payee may not know itself whether it is resident or not until the close of its accounting year, having regard to the definition of residence for a Company under Section 4-A.

Assessees are liable to pay direct where no provision for deduction is made under Section 18 or where tax has not been deducted in spite of the provision to that effect in section 18. (Section 19).

That means that once a deduction has been made, the payee cannot be taxed again even though the payer has not sent the money to Government.

Where for any reason income of another has been included in the assessment of an assessee, only such assessee is entitled to claim a refund or set off of any tax paid at source. (Section 18 (5) 2nd proviso).

A certificate of deduction must be given in all cases by any person deducting tax at source [Sec. 18 (9)].

DEPARTURE FROM INDIA—ASSESSMENT OF ASSESSEES WHO ARE LEAVING (SEC. 24A)

This section provides for a special procedure in the case of people going away and it is particularly applicable to commercial travellers. The income assessable is all the income not yet assessed. If a man has been assessed in the previous year, then normally the income now to be assessed under this procedure is the income of the previous year and the income of the current year. A notice can be issued calling for a return within 7 days and each year's income is assessable at the rate in force in the following year while the current year's income is assessable at the current year's rate.

For example, if a man is leaving on August 1st 1939 and has not been assessed at all but started earning income in India on 1st April, 1937, his income for 1937/38 will be assessable at the rates ruling in the income-tax year, 1938/39. His income for 1938/39 will be assessable at the rates ruling in the income-tax year, 1939/40 and his income from 1st April, 1939 up to the date of departure must be estimated and assessed at the rates ruling in 1939/40. In this connection, the provisions of section 23 apply and if the Income-tax Officer does not accept the returns he must give a notice under section 23 (2) calling upon the assessee to appear and produce evidence.

The practical difficulty in these cases is that many temporary residents have no means of knowing what their current year's income is until long after having got back to the U. K. and the result of their efforts is shown in the manufacturer's accounts. The Act fails to deal with such difficulties and unless this method of taxing travellers is abandoned in favour of the method in force elsewhere, charging a fixed sum, no solution is likely to be found.

A Note on U. K. Tax for People Retiring

Most people who go back to the U. K. for good are in considerable doubt as to the income on which their tax will be calculated.

It is, of course, impossible to codify all cases but we have prepared a table which we think will afford material assistance in assisting those about to leave India to work out their own

figures. No reference is made to the allowances, which vary with each man according to his family, nor of the tax on his house, if any.

The table deals with a man whose pay is £200 per month and whose pension is £55 a month. He arrives at home on July 6th, 1939.

The conditions of service have been classified thus—

(*a*) He has a house at home.
(*b*) He has an overseas pay paid in the U. K. at the rate of £32 a month.
(*c*) He is the employee of an Indian concern.
(*d*) He is the employee of a concern registered or controlled in the U. K.

The conditions of departure have been classified thus—

(1) He terminates his connection with his employer entirely before leaving.
(2) He gets 4 months' leave pay or £61 a month and then pension.
(3) He gets no leave pay but draws pension right away.
(4) He gets 3 months' salary for working at home, then leave pay at £61 for 4 months and then pension.

The following abbreviations are used—

S. Salary. L. Leave pay. P. Pension. Q. Overseas pay.

The difference between working for a concern located entirely in India and a concern registered or controlled in the U. K. should be noted. Also, the effect of having established a house.

It must be noted carefully that these figures have nothing whatever to do with income from securities, property or other employment at home. They are designed to show only to what extent earnings under employment in India will add to the income which comes under the eye of the U. K. inspector of taxes.

The effect of allowances, insurance, etc., has not and cannot be shown since it depends on each individual case.

Provident Fund Monies. There is no liability to British tax but if this money is paid into an Indian Bank and mixed up with other money, there may be trouble because the question of liability for the other funds on the remittance basis may arise. Therefore, provident funds should be remitted direct to the U. K. by the employers or trustees or should be kept entirely separate in some different account. By this means all trouble will be avoided.

Conditions of Service	1. Connection with employer terminated before leaving.			2. 4 months' leave pay £61. Pension £55.		
	1939-40	1940-41	1941-42	1939-40	1940-41	1941-42
a. b. c.	Nil	Nil	Nil	3Q £96 4L £244 5P £275 (if remitted)	Actual pension remitted during year. Sch. D.V.	Pension remitted in previous year Sch. D. V.
a. b. d.	3Q £96 3S £300 Sch E	Nil	Nil	3Q £96 3S £300 4L £244 5P £275	12P £660 Sch. E.	12P £660 Sch. E
a. c.	Nil	Nil	Nil	4L £244 (if remitted) 5P £275 ,, ,,	Actual pension remitted Sch. D.	Pension remitted in previous year. Sch D
a. d.	Nil	Nil	Nil	4L £244 3S £300 5P £275 Sch. E	12P £660 Sch. E	12P £660 (previous year) Sch. E
b. c.	Nil	Nil	Nil	3Q £96 4L £244 5P £275	Actual pension remitted Sch. D	Pension remitted in previous year. Sch. D
b. d.	3Q £96 3S £300	Nil	Nil	3Q £96 3S £300 4L £244 5P £275	12P £660 Sch. E	12P £660 (previous year) Sch. E
c.	Nil	Nil	Nil	4L £244 5P £275 (if remitted)	Actual pension remitted. Sch. D	Pension remitted in previous year. Sch. E
d.	Nil	Nil	Nil	4L £244 5P £275 Sch. E	12P £660 Sch. E	12P £660 (previous year) Sch. E

Conditions of Service	3. He gets no leave pay but draws pension of £55 per month immediately.			4. He gets 3 months' salary at home, 4 months' leave pay at £61 and then pension at the rate of £55.		
	1939-40	1940-41	1941-42	1939-40	1940-41	1941-42
a. b. c.	9P £495 (if remitted) Sch. D	12P £660 (if remitted) Sch. D	Pension remitted in previous year Sch. D	See Note	12P £660 if remitted actual year Sch. D	12P £660 if remitted previous year Sch. D
a. b. d.	3Q £96 3S £300 9P £495 Sch. E	12P £660 Actual year basis. Sch. E	12P £660 Previous year basis Sch E	3Q £96 6S £600 4L £244 2P £110 Sch E	12P £660 Actual year Sch. E	12P £660 Previous year. Sch. E
a. c.	9P £495 (if remitted) Sch. D	12P £660 if remitted actual year. Sch. D	12P £660 if remitted previous year. Sch. D	See Note	12P £660 if remitted actual year. Sch. D	12P £660 if remitted previous year. Sch. D
a. d.	9P £495 Sch E	12P £660 Actual year Sch. E	12P £660 Previous year. Sch. E	6S £300 4L £244 2P £110 Sch. E	12P £660 Actual year. Sch. E	12P £660 Previous year. Sch. E
b. c.	9P £495 (if remitted) Sch. D	12P £660 if remitted actual year. Sch. D	12P £660 if remitted previous year. Sch. D	See Note	12P £660 if remitted actual year. Sch. D	12P £660 if remitted previous year. Sch. D
b. d.	9P £495 Sch. E	12P £660 Actual year. Sch. E	12P £660 Previous year. Sch E	3Q £96 6S £600 4L £244 2P £110 Sch E	12P £660 Actual year. Sch. E	12P £660 Previous year. Sch. D.E.
c.	9P £495 (if remitted) Sch. D	12P £660 if remitted actual year. Sch. D	12P £ 60 if remitted previous year. Sch. D	See Note	12P £660 if remitted actual year. Sch. D	12P £660 if remitted previous year. Sch. D
d.	9P £495 Sch. E	12P £660 Actual year. Sch. E	12P £660 Previous year. Sch. E	6S £600 4L £244 2P £110 Sch. E	12P £660 Actual year. Sch. E	12P£660 Actual year Sch. E

NOTE

When a man who is the employee of a concern registered and controlled in India does work in the U. K. before going on leave and pension, the position is very difficult to advise on generally and the answer will depend on the individual case.

If an employee goes to the U. K. and works under the same contract as the contract under which he has been working in India, then not only will the salary he draws at home be taxable but also salary he has drawn in India from the begining of the fiscal year ; *i.e.*, in this case 3 months. His leave pay is certainly taxable. When his pension is taxable on the remittance basis or the full basis again depends on the individual facts. If it is the result of foreign employment, it is taxable on the remittance basis. If it can be said that it is the result of employment in the U. K. where in fact part of the employment has been carried out, then the tax would be on the whole amount arising under Schedule E whether it is received in the U. K. or not. Particular care, therefore, is to be exercised by employees in concerns established in India before entering into such arrangements.

The same applies to people who work at home but are not retiring.

DEPRECIATION

Depreciation under the new Act. Under the old Act, depreciation was allowed on the original cost of the assets, at the prescribed rates and continued until the cost was wiped off. It was held until lately that depreciation stopped in any case at the end of the appropriate number of years. For instance, when depreciation was 5% it was held that it could not be allowed after 20 years, irrespective of whether it was claimed or not. No depreciation could be allowed unless it was claimed.

This view has been abandoned of late, at any rate in Bengal, owing to the writer's efforts. The only restriction was the 100% limit. Depreciation had to be given up to 100% of the original cost.

Obsolescence. When machinery or plant became obsolete, the difference between the original cost less the depreciation allowed less the sale price or scrap value was allowed as obsolescence. What obsolescence meant was a subject of frequent dispute and scrap value was hard to determine. Obsolescence could be claimed either when the machinery or plant became obsolete on the basis of scrap value or when it was sold, on the basis of sale value.

Under the new Act the depreciation system is changed with effect from assessments for 1940/41. The depreciation in future is to be at prescribed rates (not yet prescribed) on written down value.

Written down value means—

(*a*) in the case of assets acquired in the previous year, the actual cost ;

(*b*) in the case of assets acquired before the previous year but after the commencement of the Indian Income-tax (Amendment) Act, 1939, the actual cost less depreciation allowable under this section ;

(*c*) in the case of assets acquired before the commencement of the Indian Income-tax (Amendment) Act, 1939, the actual cost less for each financial year since acquisition the amount of depreciation applicable to the assets at the rates in force for each such year since the 1st day of April, 1922 and at the

rates in force on the 1st day of April, 1922 for each such year prior to that date.

Unabsorbed depreciation shall not be deducted from the cost.

Actual cost in the case of a successor is the cost to the person succeeded.

The intention of the definition of written down value is plain enough but it is likely to cause a certain amount of trouble. What is the rate of depreciation "applicable" if no depreciation has been claimed? If not claimed, it is not allowed. Can a rate be applicable in the case of unclaimed depreciation? When there has been unabsorbed depreciation for a number of years the only result of fuller claims would have been to increase the unabsorbed figure. The size of the unabsorbed figure does not affect the written down value so it is difficult to understand why the written down figure is less in spite of failure to claim.

The old difficulties about what was or was not *obsolescence* have been cut out by the new Act. Section 10 (2) (*vii*) allows the assessee to charge up when plant or machinery is sold or discarded, the excess of the written down value over the sale price or the scrap value.

Similarly if the sale price exceeds the written down value, the excess is taxable profit.

In the past, to claim obsolescence it has been necessary to show the original cost. The amount of depreciation which has been allowed has been calculated from the number of years for which depreciation has been allowed and by this rough and ready method the obsolescence has been worked out with fair exactitude. If the original cost could not be shown, obsolescence has not been allowed.

Where the sale price exceeds the written down value. Under the new Act, there are two sides to this matter. The Income-tax Officer will want to know whether the sale price does not exceed the written down value. If it does, he has to add the difference to the taxable income. It becomes necessary therefore to work out the written down value for each piece of machinery or plant separately, not only for the protection of the assessee but also for the satisfaction of the Income-tax Officer. The assessee cannot claim unless he has written the amount off. That necessitates a separate valuation.

The task will be a difficult one for any assessee with a considerable amount of machinery and plant but it will be

virtually impossible for the older assessees. Nevertheless it looks as if the task has to be attempted.

There are further difficulties in this direction introduced by the proviso that unabsorbed depreciation shall not be deducted from the original cost. This would appear to be impossible of application in practice.

Consider a business with only four pieces of machinery, each costing Rs. 1,000, each earning 5% depreciation under the old Act and bought in 1927, 1928, 1930 and 1931 respectively.

In 1933, the unabsorbed depreciation was Rs. 100 and it has gone up and down since then and now stands at Rs. 300. The 1927 machine was sold in 1937 as obsolete and obsolescence allowance of Rs. 400 was given. The Rs. 300 has to be added back to the written down value or, in other words, not taken into account in calculating the written down value. Some of it is due to the 1927 machinery which no longer exists. How is this to be taken into account in calculating the written down value of the other machines?

In a simple case of this nature the task is not impossible but in the case of a large number of machines and items of plant it becomes impossible.

When the old Act came into force, the cost of assets was worked out by any means that was available. Often the balance sheet figure was taken. Those methods will have to be adopted again but the fact remains that in future the Income-tax Officer, as well as the assessee, is interested in getting a separate figure for each item of machinery or plant. Assessees have until the 1940/41 assessment to get at these figures and should take the work in hand without delay.

Unabsorbed depreciation. For the future, depreciation which cannot be set against current profits will be carried forward to be set against future profits as has been the law hitherto. Depreciation unabsorbed under the old Act is carried forward but this opinion is offered with the greatest diffidence.

Depreciation not claimed is not lost. That seems the inevitable effect of section 10 (*vi*), Proviso (*a*) which allows depreciation, provided that the prescribed particulars have been furnished and Proviso (*c*) which limits the depreciation to the original cost, but it must be pointed out that the new form of return which is statutory, includes the depreciation claim which has to be verified and if it is not duly claimed it would appear that either the return is incomplete or the failure is a statement that there is no depreciation.

However, assessees gain nothing by not claiming and the inclusion of the form in the return should preclude the possibility of omission by carelessness.

"Not being a year which ended prior to the 1st day of April 1939". There remains one more point of considerable obscurity. Section 10 (2) (*vi*) proviso (*b*) says that where full effect cannot be given to any such allowance in any year *not being a year which ended prior to the 1st day of April 1939* owing to there being no profits, the allowances can be carried forward.

The words in italics are new and it is clearly the intention that the 1939/40 assessments should start with no unabsorbed depreciation. The words in italics were inserted when it was intended to bring the whole Act into force from 1st April 1939. The change in the depreciation allowance arrangements has been postponed to 1st April 1940 so it would seem that there is certainly going to be a muddle for 1939/40, but that is merely temporary.

Since only the absorbed depreciation is deducted from the original cost to get the written down value, it is reasonable that the unabsorbed depreciation should be wiped out but it is suggested that it is more than doubtful whether this end has been achieved. In the assessments of 1938/39 it has been decided what depreciation shall be carried forward. To that extent, the figures of the 1939/40 assessment have already been determined. Unless that part of the assessments of 1938/39 is specifically set aside, it seems difficult to decide that the assessments of 1939/40 shall not start with unabsorbed depreciation, and the same consideration will apply in the 1940/41 assessments.

DISCONTINUANCE OF BUSINESS (SEC. 25)

Assessment in case of discontinued business. The law falls into two parts.

A. *Business on which income-tax was not charged under the Income-Tax Act of 1918.*—When such a business is discontinued, notice must be given to the Income-tax Officer within 15 days of discontinuance and the Income-tax Officer will assess for the previous year if that has not been done already and for the current year up to the date of discontinuance. If no notice is given, the Income-tax officer can exact a penalty up to the amount of the tax due up to the date of discontinuance.

B. *Businesses which paid tax under the 1918 Act.*—Under that Act, it was the current year's profits that were taxed. Consequently when the change was made to the previous year basis, these assessees suffered tax twice on one year's profits. Therefore this special arrangement has been made. It is best put in the form of an illustration.

Suppose a business which has paid tax under the 1918 Act and keeps its accounts on the financial year basis, makes profits of Rs. 10,000 in 1937/38 and is discontinued in August 1938, profits from April 1938 to August 1938 being Rs. 4,000.

These profits of Rs. 4,000 from April to August 1938 are not taxable and, further, the assessee can claim that the profits of 1937/38 shall be deemed to be Rs. 4,000 and can have the assessment redone if it is completed and get the refund. If such an assessee has been succeeded by someone else, he can still claim the above concession. The claim to the relief must be made within one year of the discontinuance or succession.

Discontinuance. What exactly discontinuance means is often a very doubtful point. A business may close down, selling only the goodwill. The purchaser may or may not take over the assets and the liabilities and the debts. He may or may not employ the old staff. He may or may not carry on in the old premises. All these points have a considerable bearing and the final decision depends on weighing all these factors correctly. It should be noted that in the U. K. it usually pays the assessee to claim succession and it usually pays the Revenue to deny it. The reverse is the case in India. For that reason very careful examination of the position is

necessary and it should be left to an expert. Assessees must bear this in mind before they make the change.

It should be noted that the law of discontinuance only applies when a business is closed down. When it is taken over by someone else it is a case of succession. (See note under *"Change of Constitution and Succession"*).

Under the new Act, the liability of successors is limited. (See note on *"Change of Constitution and Succession"*).

DIVIDENDS—DEFINITION

Dividends. The definition of "dividend" in its present form [section 2 (*6-A*)] was introduced by the Select Committee. It should be noted that the definition is not exhaustive. Mark the word "includes". Section 2 (*6-C*) further tells us that "income" includes anything included in "dividend" as defined in clause *6-A*. The wording in the Bill before the Select Committee stage was :—

" 'Dividend' includes any profit, advantage or gain intended to be paid, credited or distributed to its shareholders by a Company notwithstanding that the Company concerned may have capitalised the amounts out of which such payment, credit or distribution is made ; and includes also any distribution out of accumulated profit made on the liquidation of a Company to its shareholders."

Under the old Act, there was no definition at all. The Select Committee's reasons for the amendment are briefly summarised in their report as :—

"Clause 2.—We have recast and expanded the definition of "dividend", primarily in order to ensure that no distribution falling under this head shall be taxed unless there is a release of assets. Under the amended definition a debenture will when issued be treated as a dividend but an ordinary bonus share will not be liable to taxation until it is actually paid off. The definition further secures that accumulated profits distributed on the liquidation of the company shall only be included in dividend for the purposes of taxation if they arose within six years of the liquidation. Clause (*d*) of the revised definition provides for the case in which a company tries to disguise a distribution of profits as a reduction of capital. The words inserted in the new sub-clause (*c*) of clause (11) of Section 2 of the Act by clause 2 (*e*) (*iii*) of the Bill merely make a correction overlooked in the Bill, and necessary in view of the revised wording of Section 10 of the Act".

The definition has been brought about as the direct result of the Privy Council decision in regard to the estate of the late Sir David Yule (*Commissioner of Income-tax, Bengal* v. *Mercantile Bank of India Ltd. and Ors.*, 63 I.A. 451: 40 C.W.N. 1189: A.I.R., 1936 P.C. 238) dated 20/5/36.

It was held here that where a Company passes a resolution increasing capital by a new issue of preferred ordinary shares and debentures and applies a portion of the accumulated profits standing to the credit of the reserve fund in satisfaction of the amount due on the new bonus debentures, the transac-

tion is in effect not a declaration of dividend and as such not taxable as income in the shareholder's hands.

This decision is thus now nullified.

The amendment as it now stands also makes taxable bonus shares or bonus debentures issued out of accumulated profits.

So compendious a definition, however, seems rather redundant in view of the special provisions made in section 23-A for the taxing of undistributed profits (see Compulsory Declaration of Dividends).

A distribution by a Company in liquidation, of profits that arose during the six years prior to liquidation is now made taxable. This applies also in whole or in part to accumulated profits arising after the end of the previous year immediately preceding 1/4/33 when distributed on reduction of capital.

In all cases capitalisation of accumulated profits does not alter the situation.

The definition as it now stands, read with the provision made to tax undistributed profits (Section 23-A), is intended as a direct answer to assessees who evaded tax under the old Act by the simple device of having a Company that failed to pay dividends.

It should be noted that the definition does not cover debentures issued for full cash consideration. An explanation to the definition states that "capital profits" are not to be confused with "accumulated profits".

Apart from the foregoing, an important departure has also been made in taxing dividends in the shareholder's hands.

It should be remembered that super-tax paid by a Company is a corporation tax in lieu of the benefits accruing from incorporation, and is not paid on behalf of the shareholder.

The position as regards the grossing up of dividends, though now less illogical than it was, remains entirely unsatisfactory.

Under the old practice, if 90% of a Company's income was liable to tax owing to the remainder being agricultural income or tax-free income, the Revenue took 90% of the net dividend received, grossed that up and included it in total income, giving credit for the difference between the grossed up value of the 90% and the net 90%. In form the procedure was different but that is what it amounted to.

The Privy Council said that was illegal and later the Enquiry Committee acquiesced but the Revenue took no notice.

They ought to have included the grossed up figure of the total net dividend received and should have given credit for the difference between that figure and the net dividend received. The results to smaller assessees in the case of tea garden dividends would have been very different. A very perfect example of "tax snatching". See note on *Legal Avoidance.*

Procedure under the new law. Under the new law [sections 16 (2) and 49-B], the procedure will be as follows:—

If *A* is the net dividend received and the Company has paid tax on say 75% of its profits—then 75% of *A* will be grossed up to get *B*. The difference between *B* and 75% of *A* represents the tax paid on behalf of the shareholder. Let this be *C*.

Then *A* plus *C* will be included in the total income of the assessee and he will be given credit for *C*.

It is true that the law does not say that *A* shall be all included in the total income in spite of the fact that some of it may really in essence be agricultural income but the Privy Council has said so and there is no doubt that the ruling is right.

Dividends can be paid out of reserves and the Revenue is in no position to say that some particular percentage is paid from non-taxed income.

The future practice, therefore, will be more logical but nevertheless is going to lead to some remarkable results. Take the case of a jute mill concern which has big accumulated profits but no current profits. One such concern has given certificates to the effect that no part of the profits will be charged to Indian Income-tax. What is meant is that no income-tax has been paid in the particular year. Reserves accumulated in the past have, of course, paid tax.

In the past the Revenue has, when 40% of the dividends were declared to come out of taxable income, taken 40% of the dividends and grossed those up but when the Company has paid no tax and has paid dividends from reserve they have assumed, without authority, that all the dividend is from taxed income. That, at any rate, has been more sensible than ignoring the dividend altogether.

With Section 49-B as it is what they will do is to take the net dividend and allow no credit for the tax paid. These dividends, therefore, will pay tax twice, once when put into reserve in the hands of the Company and once when distributed to the shareholders.

To take a concrete example.

Take the case of a shareholder who gets Rs. 100/- net dividend and whose total income justifies a tax rate of 20 pie in the rupee.

Under the old practice.—If 100% of the Company's income had been taxed, the shareholder found Rs. 117/3 included in his total income and got credit for Rs. 17/3. At 20 pie he was due to pay about Rs. 12/3 so he got a refund of about Rs. 5. If 40% of the Company's income was taxed, then 40% was grossed up to Rs. 46/14. He got credit for Rs. 6/14 and paid about Rs. 4/14 tax so he got a net refund of Rs. 2.

If the Company did not pay tax owing to losses, the position was the same as if 100% of its income had paid tax.

Under the new law.—If 100% of the Company's income is taxed, the position is unchanged. If 40% of the Company's income is taxed, credit will be given for Rs. 6/14 and the assessee will pay tax on Rs. 106/14, or Rs. 11/2. So he will pay an additional Rs. 4/4.

If none of the Company's income is taxed, the assessee will pay Rs. 10/6 on Rs. 100 and get no credit although it is clear that the dividend could only have been taken from reserves which must have been taxed in the past.

Possibly, executive instructions will put this right but it seems unlikely. The only fair method is to work on the taxable properties of the Company's gross income before deduction of expenses or depreciation.

The official view.—We have set out above what we believe is the correct interpretation of the law. The official view is very different and more favourable to the assessee. If, in any year, a Company's profits are (say) 50% agricultural and 50% from business, half the dividend will be held to be taxable. The same principles will be applied to capital and non-taxable receipts.

Not only is this view contrary to the Privy Council decision that dividends cannot be disintegrated, but it is going to lead to endless confusion and we anticipate that in a year's time that fact is going to be recognised. As for the Hungerford Trust decision of the Privy Council, this is said to be overruled by the new Act but we can find no justification for the theory that the new Act says that dividends can be disintegrated, though section 49B has certainly prevented the Revenue from giving a refund on any greater proportion of a dividend than the portion that has borne tax in the Company's hands.

DOUBLE INCOME-TAX RELIEF (SEC. 49).

Relief in respect of United Kingdom income-tax. This subject is one on which there is infinite room for argument. Present practice is in accordance neither with the law nor with the notifications issued. It was originally decided that if the same source of income was taxed both in the United Kingdom and in India, relief in the rate should be given in both countries (on the whole amount taxed). If the Indian rate was lower than the United Kingdom rate, relief would be given in the United Kingdom at the Indian rate subject to the proviso that relief in the United Kingdom could not exceed half the United Kingdom rate. If, therefore, the Indian rate exceeded half the United Kingdom rate, the balance of relief had to be obtained in India. Some years ago a decision of the Courts laid down that relief could only be given on the amount of income which had been taxed in both countries. If, owing to the different system of allowing expenses, the final computation for tax was *A* in the United Kingdom and *B* in India, relief could be given only on the smaller of *A* and *B*. That case has been followed universally of late, though a recent decision casts the gravest doubts on its validity.

The result is that relief is given equivalent in total to the lower of the two rates on the lower of the two computations.

Individual income. In the case of individuals, the computation of taxable income in the United Kingdom is always less owing to the fact that in the United Kingdom various allowances are deducted from the total income to get at the taxable income and those allowances are not provided for under the Indian law. Normally, for individuals the United Kingdom rate is higher. Therefore the relief given is on the United Kingdom computation at the Indian rate and this results in the scheme of relief falling very far short of what was originally intended.

Example: A man with £1,000 a year earned income, a wife and three children is taxed in the United Kingdom and India. His United Kingdom allowances are:—

Earned income allowance	...	£200
Married allowance	...	£180
Children's allowance	...	£180
Total	...	£560

His taxable income is therefore £440 and his tax is

£135 at 1/8d.	=	£11	5	0	
£305 at 5/6d.	=	£83	17	6	
Total Tax		£95	2	6	or about 4/4 in the £.

His Indian tax on £1,000 or Rs. 13,666 is Rs. 1,012/15 or 14·23 pie in the rupee or about shillings 1/6 in the £. Shillings 1/6 is less than half shillings 4/4. So the relief will all be given in the United Kingdom and will amount to shillings 1/6 on £440 or £33.

Such a tax-payer therefore pays £62-2-6 in the United Kingdom and Rs. 1,012/15 in India. His total tax is therefore £138.

This example shows how very far double income-tax relief falls short of the goal originally aimed at.

Income of companies. For Companies, the United Kingdom rate of tax is always more than the Indian rate. As a result, the net tax payable by companies is the United Kingdom tax on the United Kingdom computation if the United Kingdom computation is higher than the Indian computation and if the Indian computation is the higher, the net payable is the United Kingdom tax on the United Kingdom computation plus the Indian tax on the difference.

Those companies therefore which pay tax in the United Kingdom are concerned only with trying to keep their Indian computation down to the United Kingdom computation. It does not matter to them at all what rate of tax is imposed in India or what the company super-tax is or whether there is or is not any exemption from company super-tax.

Dominion Income-Tax Relief was by law limited to cases in which the tax was paid in the same year. This led to relief being denied on income which though doubly taxed was taxed in one financial year in India and another financial year in the United Kingdom owing to certain provisions of the law. That injustice was put right by executive order and is now put right by law by the insertion of the words "for the corresponding year", though it may be doubtful if the wording is very happy or conveys what it is intended to convey.

Relief in respect of non-reciprocating countries. Though this is not double income-tax relief in the ordinary sense, it falls under the same heading.

Any person who has paid British Indian tax and can prove that he has paid tax in respect of the same foreign income in any country which has not double income-tax relief arrange-

ments with British India can deduct from the Indian tax payable one half of the Indian tax or one half of the foreign tax, whichever is less.

This very considerable concession to foreigners is, for the moment, hedged round by no restrictions. So long as the foreign income taxed in British India is taxed elsewhere, the relief is obtainable and the section does not specify in what year it must be taxed elsewhere. [Sec. 49D].

DOUBLE INCOME-TAX RELIEF—FOREIGN INCOME (SEC. 49D)

This relief is new. Any person who shows that he has paid tax in a country with no double income-tax relief arrangements with British India in respect of income arising in that country can get relief of one half of the foreign tax or one half of the Indian tax, whichever is less.

This is a considerable concession but does not mean all that it may seem to mean at first sight.

The concession is only as regards "income arising without British India". If a foreign concern is taxed under section 42 on income arising from a business connection with India, that is income arising or accruing in British India and if any foreign tax is imposed on that income, that does not come within the scope of this section.

On the other hand, a resident, also ordinarily resident, pays tax on income from securities in America. In that case the section applies. The whole essence of the section is in those words "income arising without British India".

It would seem however that the relief is not admissible on (say) French tax imposed on income arising in (say) America.

DOUBLE INCOME-TAX RELIEF ON INCOME PAID IN INDIA, BURMA AND THE UNITED KINGDOM

The ordinary assessee is so confused over this matter that this small attempt is made to explain matters.

Companies are sometimes assessed in Burma and India as well as in the U. K. If they are assessed in Burma and India only the rate of relief in India is "a rate bearing to the Indian rate of tax or the Burma rate of tax, whichever is lower, the same proportion as the Indian rate bears to the sum of the Indian and Burma rates." Thus, if the Indian rate is 41 pie and the Burma rate 26 pie, the rate of relief in India is got by working out $\frac{X}{26}=\frac{41}{41 \text{ plus } 26}$ and the rate of relief in Burma is got by working out $\frac{Y}{26}=\frac{26}{41 \text{ plus } 26}$ so that X plus Y=26 and the Company is left to pay a net 41. If a Company pays tax in the United Kingdom, India and Burma, the position is as follows:—

If K is the United Kingdom tax, I the Indian tax and B the Burma tax, $\frac{K}{2}$ relief will be obtained in the United Kingdom.

The relief in India will be got by working out $\frac{X}{I \text{ plus } B-\frac{K}{2}}=\frac{I}{I \text{ plus } B}$ and the relief in Burma is $\frac{Y}{I \text{ plus } B-\frac{K}{2}}=\frac{B}{I \text{ plus } B}$ so that

$X \text{ plus } Y=I \text{ plus } B-\frac{K}{2}$

The relief obtained in the United Kingdom is $\frac{K}{2}$ so the total relief obtained is I plus B and as the assessee has paid K plus I plus B originally he pays net K, the highest tax of the three. So far it is fairly simple. The assessee first gets his United Kingdom relief and then applies to his Income-tax Officer in India and Burma for the other two reliefs.

Consider now the case of a shareholder who has dividends from a Company taxed only in Burma and India at 26 pie plus surcharge or say 28 pie in each case. The Company will have got a refund of 14 pie in each country and will have paid 14 pie in each country. Suppose the shareholder has 12,000/- of other income and 1,000/- of dividends gross from which income-tax has been deducted. There are two sorts of refunds involved,

one is under section 48 and is concerned with the difference between the shareholder's rate and the Company's rate and the other refund is on account of double income-tax relief. Under the present Act, the shareholder is liable to tax at the rate of 13 pie. He is now getting a refund under section 48 at the rate of 28 less 13 pie on his dividends.

He will get credit at the time of assessment in India and he applies as a non-resident in Burma. That means the Company pays at the rate of 28 pie in India and the Company gets 14 pie back while the shareholder gets 13 pie back leaving 1 pie to the Revenue. The same thing is happening in Burma and there is clearly something wrong. If the shareholder's rate is 6 pie plus ½ pie surcharge he gets back 21½ pie so that the Revenue actually loses money. However, let that point pass for the moment. This is what is actually happening.

The Company has paid 14 pie in India and 14 pie in Burma. The shareholder has got back 13 pie in each case. So there is 1 pie more to come back through the double income-tax relief and half can come back from Burma and half from India. The excess refund point mentioned above is put right, as far as India goes, by the new Act. What Burma is going to do remains to be seen.

Let us take now a typical case under the new Act in India and on the assumption that the old Act continues in Burma. The United Kingdom rate on Companies is 5/6d. or 52 pie. The Indian income tax on Companies will be 30 pie and the Burma rate we will assume stays at 28 pie.

A Company pays 52 pie in the United Kingdom.
30 pie in India
28 pie in Burma.

It gets 26 pie relief in the United Kingdom. It has paid in India and Burma 58 pie so it has to get 58 less 26 pie or 32 pie in these two countries.

This refund will be given—

India	$16\frac{16}{29}$ pie
Burma	$15\frac{13}{29}$ pie

This Company will then have paid net—

U. K.	26 pie
India	$13\frac{13}{29}$ pie
Burma	$12\frac{16}{29}$ pie
Total	52 pie

Now take a shareholder in India with say 2,000/- other income and 12,000/- gross dividends.

He will get paid 10,125/- after deduction of tax but his income for tax purposes is 12,000/- from the dividends or 14,000/- in all. On this his tax will be

Rs.		Rs. A. P.		Rs. A. P.
1,500	at	zero		zero
3,500	,,	0 0 9		164 1 0
5,000	,,	0 1 3		390 10 0
4,000	,,	0 2 0		500 0 0
14,000			Total Rs.	1,054 11 0

The Company has paid 1,875/- tax and he will get credit for that but the Company has got $16\frac{16}{29}$ pie refund in India so he will be debited with $16\frac{16}{29} \times 12{,}000$/- pie or about 1,034/- leaving him to pay 1,054/11 less 1,875/- *plus* 1,034/- or 213/11 in India.

Tax in U. K.

Let us suppose he has a wife and 6 children. His income is

2,000/- earned	or	£150
12,000/- unearned	or	£900
		£1050

His allowances are

Earned income allowance ...	... £ 30
Married allowance ...	... £ 180
Children ...	... £ 360
Total	£ 570

Taxable income £480.

Tax :—	£135	at	1/8d. =	£ 11 5 0
	£345	at	5/6d. =	£ 94 17 6
			Total	£ 106 2 6

£106-2-6 on £480 is approximately 4/5*d.* in the £. But the dividends have paid net 26 pie in the United Kingdom or about 2/9*d.* in the £. This means the rate is 4/5*d.* so that the

assessee is not entitled to any refund. (If he had had 12 children his allowances would have been £930 and his taxable income only £120 and his rate 1/8*d.* so he would have got back 1/1*d.* in the £ as a non-resident but let us leave such a man to stew in his own family.)

Burma. On an income of 14,000/- under the old Act his rate of tax is 13 pie. He can claim a refund as a non-resident of the difference between 28 pie and 13 pie or 15 pie on the 12,000/-. That is 937/8.

We have now finished with the personal refunds.

The income 12,000/- or such of it as is taxable has paid
26 pie in the United Kingdom.
14 pie in India (1,055/- on 14,000/-)
$12\frac{16}{29}$ pie in Burma.

The shareholder is now entitled to his Double Income-Tax refunds. He has to pay 26 pie. He gets 13 pie refund in the United Kingdom and has to get 14 pie plus $12\frac{16}{29}$ pie less 13 pie or $13\frac{16}{29}$ pie in India and Burma. He gets $\frac{14}{26\frac{16}{29}}$ of this or 7 pie in India approximately and 6½ pie in Burma approximately.

Thus the total D. I. T. relief will be

13 pie United Kingdom.
7 pie India
6½ pie Burma.

26½ pie or about 1656/-.

The assessee must first work out his personal refunds and obtain them if due and must then work out his D. I. T. refunds and set about obtaining them.

The personal refunds in Burma are obtained from the Non-Residents' Refund Circle, Rangoon, and in the United Kingdom from the Chief Inspector of Taxes (foreign claims), Cornwall House, Stamford Street, London.

Apparently the double income-tax relief should be applied for from the officer who taxed the Company.

Such is the procedure put in the simplest language and it is obvious that the ordinary assessee with a little income from Burma Corporation or Indian Copper may as well abandon hope straight away.

DOUBLE TAXATION—EXEMPTIONS FROM

Power to make exemptions etc. Under section 60 (*1*) the Central Government had powers to exempt any class of income. By section 60 (3) this power is now abolished. The section remains in order to allow the Central Government to rescind any existing exemptions.

The exemptions will be found in the Manual. They refer mainly to Government servants, military pensions and salaries of officers here on diplomatic and kindred jobs.

As regards double taxation, there has never been in the Act any express prohibition of it. There has always been a sort of unwritten law against it and Mr. Chambers stated categorically in the Assembly that the law did not permit it.

What double taxation means. The trouble, however, is that there is no exact definition of double taxation. If it means taxing the same income twice in the same hands in the same year, then it may be taken for granted that it is not permitted.

If it means taxing the same income in the same hands in two different years, then it may be said that the old Act permitted it, and the new Act does not. Under the old Act, the year of account had to be a full year. In the event of a change in the accounting period by putting the closing date earlier, this meant double taxation in this sense, and the Department made no attempt to avoid it, except warning the assessee. Section 4, even now makes it possible to tax foreign income in the year of accrual and again later on receipt in India.

If double taxation means that the same income cannot be taxed in two different hands in the same year or different years, then neither the old Act nor the new expressly stop it and assessees are left to the Commissioners to put matters right and Commissioners are going to lose their powers.

Income may be taxed in the hands of an individual. Another officer may hold that it is income of a company. Income may be taxed in the hands of a wife. Another officer may hold it is taxable in the hands of the husband. When both assessments are in the same province, the assessees may hope to get justice but when they are in different provinces, each may honestly feel it is clearly right and High Courts have been known to differ.

In the old form of return for Companies, there was a column for deduction of any sum already taxed. What exactly that meant no one knew but in its most literal form it was indeed a very definite ban on double taxation. The form was then changed, apparently to make it more explicit but it became less explicit on this point. Now in the new return in Part IV is the phrase "deduct any profits or gains upon which tax has already been paid".

If that means paid in any one's hands it is explicit enough. The Income-tax Officer will, however, argue that it does not mean that and in certain cases it is easy to see that it would not necessarily mean that.

The exemptions already published, however, make things as plain as they can and particular attention is drawn to the Income-tax Manual para 18.

Exemptions under Para 18. Para. 18 exempts:—

"Sums received by an assessee on account of salary, bonus, commission or other remuneration for services rendered or in lieu of interest on money advanced to a person for the purposes of his business, where such sums have been paid out of or determined with reference to the profits of such business and by reason of such mode of payment or determination have not been allowed as a deduction but have been included in the profits of the business on which income-tax has been assessed and charged under the head business.

Provided that such sums shall not be exempt from the payment of super-tax unless they are paid to the assessee by a person other than a company and have already been assessed to super-tax".

Those words would appear to be as wide as they possibly can be. The arrangement is very similar to the law in the case of unregistered firms when the partner pays on his share if the firm has not paid. Nevertheless there is always an attempt to whittle down the true meaning of these words.

There are private companies in which the shareholders are directors. The Income-tax officer may consider that the sums paid as directors' salaries or fees are unreasonably high and disallow part of them. That part ought to be tax free in the hands of the recipients but the Income-tax officer builds up his objections to this course on the words "by reason of such mode of payment".

They certainly are somewhat obscure and in such cases the practical course is to fix the directors' salary at a percentage of the profits with a maximum limit. When that is done, there can be no obscurity. Sometimes there may be a payment of royalty from a company to an individual. The Income-tax officer will probably try to argue sooner or later that it is not

an admissible expense in the hands of the company. The best course is to start arguing first that it is not taxable in the hands of the recipient individual. The Income-tax Officer will resist the claim. Let him do so and put it on record and there is a valuable point in hand when the argument about the company comes up.

This seems to be a note as much on the psychology of the Income-tax Officers as on the law and that being so, another tip is worth putting here.

Caution. Never make an entirely exact return even though you are in the position to do so. It is quite natural for the officer examining the accounts to feel happier if he has added something back. If you feel certain that some items of expenditure will be disallowed, do not add them all back yourself. Let him do it for you. You give something. He takes the rest. Thus is amity achieved.

FIRMS

Definition. Section 2 (6B) of the Act defines "firm, partner and partnership" as having "the same meaning respectively as in the Indian Partnership Act, 1932", with the exception that for Income-tax purposes "partner" includes a minor who has been admitted to the benefits of partnership.

The definitions given in the Indian Partnership Act are as under (section 4) :—

" "Partnership" is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all.

Persons who have entered into partnership with one another are called individually "partners" and collectively "a firm" and the name under which their business is carried on is called the "firm name".

Section 6 of the Indian Partnership Act is also usefully quoted here :—

"In determining whether a group of persons is or is not a firm, or whether a person is or is not a partner in a firm, regard shall be had to the real relation between the parties, as shown by all relevant facts taken together.

Explanation I.—The sharing of profits or of gross returns arising from property by persons holding a joint or common interest in that property does not of itself make such persons partners.

Explanation II.—The receipt by a person of a share of the profits of a business, or of a payment contingent upon the earning of profits or varying with the profits earned by a business, does not of itself make him a partner with the persons carrying on the business;

and, in particular, the receipt of such share or payment—

(*a*) by a lender of money to persons engaged or about to engage in any business;

(*b*) by a servant or agent as remuneration;

(*c*) by the widow or child of a deceased partner as annuity; or

(*d*) by a previous owner or part owner of the business, as consideration for the sale of the goodwill or share thereof,

does not of itself make the receiver a partner with the persons carrying on the business".

A firm cannot be a partner in another firm. Where such an arrangement exists it is to be taken as meaning that the individual partners are themselves partners.

A person not responsible for losses cannot be a partner.

The foregoing will have given the reader an insight into what a firm actually is. We now come to the method of their assessment to income-tax.

For Income-tax purposes, firms are divided into two categories—registered and unregistered. The method of

securing registration is given later on in this chapter, and its advantages are considerable, unless the firm is very small. Partners of registered firms are better off than those of an unregistered firm and members of companies, particularly in the latter case where super-tax paid by the company is not treated as a payment made on behalf of the shareholders.

A registered firm is defined in the Income-tax Act [section 2 (*14*)] as "a firm registered under the provisions of section 26A". (These provisions are given under the head "*Registration of firms*").

An unregistered firm is defined [section 2 (*16*)] as "a firm which is not a registered firm".

Registration of firms. An application for registration is to be made in the special form available on application and must, under the new law, be signed by all the partners. The application, accompanied by an instrument of partnership in duplicate specifying the individual shares of the members, should be filed at any time prior to the assessment, but it is advisable to forward it with the return (section 26-A). The Income-tax Officer has the right to question the agreement and to reject it if in his opinion the transaction is mala fide. He has also the authority to impound an insufficiently stamped document. It should be remembered that a minor who has been admitted to the benefits of partnership is treated as a partner for Income-tax purposes.

On receiving the application, and satisfying himself as to the genuineness of the deed, the Income-tax Officer will endorse the original with a certificate to the effect that registration has been allowed, and return the deed to the assessee. The duplicate copy will remain as part of the assessee's record. Where the original cannot be produced, and the Income-tax Officer is satisfied that such is the case, he will accept a duplicate and endorse it accordingly. In such a case, however, an extra copy should be sent for record purposes. Where the original cannot be produced, the copy submitted is to be certified by all the partners as being a true copy.

Registration once granted, holds good up to the end of the financial year in which it is allowed, but can be renewed each year by the Income-tax Officer on an application in the form mentioned above, accompanied by a certificate signed by all the partners to the effect that the constitution of the firm remains unchanged. Should the constitution change, a new partnership deed is, of course, necessary.

An application for registration will be accepted up to the time of making an assessment, irrespective of when the assessment is made. An appeal may be preferred to the Assistant Commissioner within 30 days of receipt of the Income-tax officer's refusal to allow registration. In such cases, the Assistant Commissioner has the authority to grant registration even after the assessment is completed.

Registration may be refused or cancelled if, for failure to submit a return of income, or furnish evidence called for by the Income-tax Officer within time, an *ex parte* assessment is made. (*See Ex Parte Assessment*). The Income-tax Officer, however must give the firm at least fourteen clear days in which to show cause why the cancellation should not be effected. (See section 23 (*4*) proviso). No specific appeal is provided in the Act against cancellation of registration in such circumstances.

Assessment of Registered Firms. [Section 23 (*5*) (*a*)]. An assessment is made on the firm direct, but is not carried to the demand stage. Instead, the total income computed is allocated among the partners in proportion to their shares and is included in their total income. For the method of computing such shares, see below. If, however, one of the partners is resident outside British India, his share of profits is assessed on and payable by the firm, at the rate applicable to his total income (including the share of income in question). Losses made by the firm are similarly allocated to the partners.

Where a change has occurred in the constitution of a firm, or where a firm has been newly constituted, the assessment is made on the firm as it is constituted at the time of making the assessment. The distribution will, however, be made amongst those who were partners in the *previous* year and in proportion to their shares in such *previous* year. If, however, for any reason the tax thus assessed on any partner cannot be recovered from him, it will be recovered from the firm as constituted on the date of assessment. These provisions are new and are aimed at putting an end to the practice of changing the constitution each year and to enable the Income-tax Officer to assess according to the actual distribution of profits. (See *notes on Succession*).

If the shares are not distributed among the partners in the proportion laid down in the partnership deed and the total income of a partner is as a result shown at a smaller figure, he can be penalised to the extent of 1½ times the difference

between the tax finally assessed on him and the tax as based on the figure of his return. [Section 28 (2)].

In preparing the assessment of the firm, losses under one head can be set off against any profits under another head. Should a margin of loss still remain, it will be apportioned among the partners as above in the ratio of their proprietorship and can in no circumstances be carried forward to be set off against the income of the firm itself in the following year (Section 24 (2) Proviso).

Share.—The word "share" here should not be given the meaning ordinarily attached to it. It includes any sums shown in the books of the firm as payable to a partner by way of salary, interest, commission, or other remuneration (section 16 (*b*)), which has the effect of their increasing or decreasing the amount based on the actual division of net profits or losses. If the resulting figure is a loss, it may be set off against the other income of such partner in that year, or carried forward. (See "*Set Off*").

Where an unregistered firm (see under "*Unregistered Firms*") is treated by the Income-tax Officer as a registered firm, these provisions will also apply.

Super-tax is payable on any profits derived by a partner from a registered firm if the figure of his total income, including the share, makes him liable to super-tax.

Where a previous partner has given up his share in a firm as a result of a change in constitution or has died, only his successor by inheritance and no other person (*e.g.*, the person succeeding him as a partner) is entitled to carry forward losses allocated to him by the registered firm, when he was a partner. [Section 24 (2), 3rd proviso].

This is a very important provision and has been influenced by the fact that a son inheriting a business from his father is liable to pay his father's business debts out of the assets that he inherits.

Assessment of Unregistered Firms. The method of assessment differs from that of a registered firm in that the assessment is made on the firm direct, at the rate appropriate to its total income (see Finance Act, 1939, Schedule II). For the purposes of super-tax the first Rs. 25,000 total income is exempt.

With a view, however, to putting an end to the practice of avoiding registration when the assessee finds it to his advantage to do so, section 23 (5) *b*—a new provision—has

been inserted in the Act. This enables the Income-tax Officer to treat the firm as registered and make the assessments on the partners accordingly (see *ante "Assessment of Registered Firms"*) if in his opinion treatment as a registered firm would be to the benefit of the Revenue.

The object of this provision will be better understood after a study of this chapter.

We have already stated that an unregistered firm is assessed in the same manner as an individual on its total income and tax levied at the appropriate rate. Tax is payable by the firm direct.

Each partner's "share" is then ascertained and included in his total income as income from an unregistered firm but he is not taxed again on the sum. It should be noted, however, that this "share" is made up of the partner's portion of the net profit or loss, as the case may be, increased or decreased by any sums payable to him by the firm in the shape of salary, interest, commission, or other remuneration, and included in the firm's account.

In the partner's personal assessment, his share in the unregistered firm (computed as above) will be included in his total income for rate purposes only and will be exempt from tax if the firm has paid tax. If, however, the firm's total income was below Rs. 2,000 no exemption in respect of his "share" will be allowed in any partner's hands. [Section 14 (2) (*a*) read with section 16 (*1*) (*a*)].

Similarly with super-tax. If the firm has paid super-tax, the amount of his share computed as above will be included in the partner's income if a plus figure for rate purposes only and thereafter allowed as an exemption. Where, however, no super-tax has been paid by the firm, no exemption will be allowed to the partner in respect of such share. This paragraph does not, of course, apply to cases where the Income-tax Officer has exercised his power of treating an unregistered firm as a registered firm. (Section 55).

Set-off of Losses. Any loss made by an unregistered firm cannot be set off as a whole against the income of any or all its partners [section 24 (2)]. The firm may, however, carry forward such loss as provided. [Section 24 (2)]. (See *"Set Off"*).

For further details *see* under *Set off* and *Carry Forward of Losses.*

FOREIGN INCOME—EXEMPTION FROM

Section 4 (*a*), third proviso, says that if the income accruing or arising outside British India exceeds the amount brought into British India Rs. 4,500 of the excess is exempt. As pointed out in the note on "Filling the Return" the return form seems to be in error. It provides only for giving the exemption to ordinary residents. There seems to be no justification for that limitation. All residents, whether ordinarily resident or not ordinarily resident are entitled to it.

It is clear, however, that it may make a good deal of difference how it is allowed.

Supposing an assessee has income from Singapore which has no income tax amounting to Rs. 4,500 and income in the United Kingdom amounting to Rs. 4,500. If he could set the Rs. 4,500 exemption against the Singapore income he would pay on the United Kindom income and get most of it back through the double income-tax relief provisions. If he had to set it against the United Kingdom income he would get nothing back. Nothing is said, so far, as to how the exemption is to be claimed but it is probably intended that it should be set off proportionately against all foreign income. In the absence of any ruling, assessees should claim it as suits them best.

CALCUTTA HIGH COURT RULES UNDER THE INCOME TAX ACT

The first four and the sixth of the following rules were passed with effect from the 24th April, 1927. The fifth rule was substituted for the former rule 5 and rr. 7 and 8 were added with effect from the 1st June, 1928.

The words "and Attorneys" were added after the word "Vakils" in r. 6 with effect from the 1st June, 1928.

Reference to be presented to Registrar.

1. All references under section 66 of the Indian Income-tax Act, 1922, whether arising in the Court's Original or Appellate Jurisdiction, shall be presented to the Registrar, Original Side, and shall be dealt with on the Original Side.

Paper-books.

2. Paper-books in respect of each reference shall be prepared by or on behalf of the Commissioner and be filed within one month (or within such further time as the Registrar shall allow) of the presentation of the reference.

Appointment of Bench to hear.

3. Upon the paper-books being filed the Registrar shall lay the matter before the Chief Justice who shall appoint a Bench under section 66A of the said Act to hear the reference and shall fix a day for the hearing.

Notice to parties.

4. Notice of the day fixed for the hearing shall be given by the Registrar to the Commissioner or his solicitor (if any). The Commissioner shall cause such notice to be served on all parties to the reference.

Applications under s. 66 (3).

5. Every application under section 66 (3) of the said Act shall be presented to the Registrar, Original Side, who shall submit the same to the Chief Justice or to the Bench appointed by the general or special order of the Chief Justice, for the purpose of fixing a date for hearing. The Registrar shall intimate to the person presenting the application the date so fixed and the Bench before which the same shall be made.

Who may act.

6. Vakils and Attorneys shall be entitled to appear and act in all matters governed by these rules whether the same arise in the Court's Original or Appellate Jurisdiction.

Fee for acting.

7. Unless otherwise ordered, a Vakil or Attorney appearing on such reference shall receive for all his work and labour in the matter a fee of seven gold mohurs besides such fees for Advocates, if any, appearing therein as the Court may allow. Such fees shall be paid by such party as the Court may order.

Service of Rule under s. 66 (3).

8. Whenever a Rule is issued by the Court on application under section 66 (3) of the Indian Income-tax Act, the rule, shall be served upon the Commissioner of Income-Tax. The Commissioner shall be at liberty to show cause by means of a letter addressed to the Registrar, Original Side.

HINDU UNDIVIDED FAMILIES.

Hindu Undivided Family. A Hindu undivided family is nowhere defined in the Act, the only reference we find to it among the definitions (section 2 (9)) being that "person" includes a Hindu Undivided family.

Any other than a very simple sketch of what constitutes such a family and the type of property assessable as belonging to it, would be outside the scope of this work, and the keen student is referred to one of the several treatises on the subject written by specialists in Hindu law.

Briefly, a Hindu undivided family is a coparcenary or tenancy in common, existing only among certain degrees of relatives, including relatives by adoption. The law on the subject is governed by Hindu religious tenets and the decisions of civil courts and a Hindu undivided family as such cannot be formed by contract among strangers or others outside the stated degrees of kindred.

There are two schools of Hindu law, the Dayabhaga and the Mitakshara. The former is confined more or less to Bengal alone.

The fundamental point of difference between the two may broadly be stated to be in their attitude towards ancestral property and the admission of females into the coparcenary in certain circumstances.

Under either law, the earnings of the members from the exercise of a profession or otherwise, are not joint family property. Such income is accordingly assessable in the hands of the individual members. Once, however, such income is put into the common pool, it becomes joint property and is treated as such. Property acquired by the father during his lifetime, under either school, is similarly his and can be alienated by him at will. It will thus be seen that the only problems that arise are in connection with property inherited, either by a father with sons or by sons from their father. A Hindu undivided family formed of several generations is not uncommon.

Dayabhaga Law. Under this school, ancestral property remains the sole property of the father during his lifetime and is in the same position as that self-acquired, unless of course

he himself is a member of a coparcenary. On the father's death, however, should the sons decide to enjoy the property jointly, a coparcenary immediately opens and embraces also the male children of the sons (brothers).

At least two male members are essential before a coparcenary can be formed, but once this state exists, the wife and daughter of one of the members can, in the event of his death, be admitted into the coparcenary in his place. It is thus possible to have a Hindu undivided family consisting of one male member and the wife and daughter of his deceased brother. In the event of partition, however, the two females can possibly claim only the share to which their father would have been entitled—namely, half.

All that the sons are entitled to during their father's life-time is maintenance but no attempt is made to tax the maintenance received by the sons, nor are sums spent as such allowable as a deduction to the father.

Mitakshara Law. Under this school, the self acquired property of the father remains his own, and can be alienated by him at will on the same lines as that of a father under the Dayabhaga law. With regard to ancestral property, however, the position is different. Immediately the grandfather dies, his grandsons acquire a right to his estate—a right which extends to every male descendant from the time of his birth, and in certain cases in the womb. The Mitakshara male infant has accordingly been referred to as "a terrible gentleman." The position of the father (in regard to the ancestral property) is after the style of a trustee to his *cestui que trust*. The whole family, with their male descendants, are thus treated as one joint whole—the only property excluded being that acquired by the father and the male members by their own exertions, if not sunk into the pool at their option.

If, however, the ancestral property devolves by inheritance, either from his father or his brother, on a single male member himself without any male issue, the coparcenary virtually closes, to be immediately opened again on the birth of a son. The existence of a wife and daughters does not affect the issue.

Stridhan. From the foregoing it would appear that the Hindu lady has no rights whatsoever. A note on Stridhan is accordingly appropriate here.

Gifts from a husband to his wife or from a father to his daughter remain her sole property, and are passed on from *mother to daughter*. Where the right to maintain her daughters devolves on a Hindu mother, sums paid as such maintenance

are not admissible as a deduction in her assessment to income-tax, nor can their value be treated as income in the hands of the daughters. Stridhan, which exists of gifts as mentioned and the income therefrom cannot, however, be assessed as joint family property in the hands of a mother and her daughters. Such property remains that of the mother during her lifetime and can be alienated by her at will. But see under *"Husband and Wife"*.

Legal Assumption of jointness. The law assumes that the property held by a Hindu family is joint, and this presumption continues until the contrary is proved. Further, once the property is proved to be joint, the presumption is that it continues so until partition is proved. Similarly, further property acquired by the family, or property acquired from family resources is considered joint in the absence of proof to the contrary.

These presumptions apply, however, in the case of males alone, and not to property held by a Hindu lady as her *stridhan,* nor to further property acquired from such resources.

Partition. This is normally brought about by a decree of a Court, or by a formal registered deed (where the property involved is in excess of Rs. 100). Other considerations can also bring this about, such as the surrender by one of the co-owners of his rights or his remaining separate for over twelve years, by a member ceasing to belong to the Hindu Faith, and by the expressed or written consent of the members to partition.

It is this last method which occasions most trouble to the Income-tax officer and which forms the most common ruse adopted in an endeavour by the members to seek the benefits of individual assessment.

Partition has been held by the Courts to be mainly a question of fact in each case, and this is the most powerful weapon in the Income-tax Officer's hands and used by him whenever substantial evidence in the shape of a partition deed or otherwise is not forthcoming. Mere cessar in commensality is not conclusive on the question of partition.

The following extract from the speech of Mr. Bhulabhai Desai in the Assembly, at the time of removing the words from the then existing law—"that a separation of the members has taken place",—will prove of interest and clear any further doubt as to the exact object behind the amendment of Sec. 25A(*1*) (Debates, p. 3966) :

"My Honourable friends at least concede that there need not be separation in worship and food. Now, we come back to property. A partition is nonetheless a valid and genuine partition whether it is

divided by metes and bounds or not. Does not my Honourable friend know of cases of two or three persons owning a house? Has it ever been required that it should be separated into so many tenements? My Honourable friends themselves carried an amendment that an association of persons who are owners of property shall be taxed on their own proportion of the share in the property. Now, a divided Hindu family is an association of persons holding property in definite shares. They have already done it here in this House, there is an amendment passed by which, in the case of an association of individuals holding property in definite shares, each one of them will be taxed on his own share; and in the net result of a genuine partition—you can question the authenticity, that is another matter—but I am assuming that it is perfectly genuine, that they have not broken the walls and so on. I would put it to my Honourable friend whether there is any distinction between an association of individuals holding property in definite shares and divided members of a Hindu family. Suppose we three of us buy a property, myself, Mr. Aikman and Mr. Aney, it is not required that we must necessarily have three partitioned walls before it is done. We may be letting out the property. The metes and bounds is a matter which makes it still worse, because it can easily happen that in a dwelling house you may divide it by metes and bounds, but, in the case of a property which is only intended to produce income, I do not see where the law comes in, that you must do it by metes and bounds. Why must you do it? What the law requires is that you must divide the property. Supposing there is a chawl, and thirty rooms belonging to each brother, and it is said: "You must be taxed on a hundred, all of you together unless there is a partition of thirty rooms each". My Honourable friend is mistaken. I can well understand your going to the primitive stage of an ordinary field, where perhaps the metes and bounds idea has some sense, but we are dealing with people belonging largely to urban areas who have varieties of kind of properties. That is an expression which is a purely physical one. Supposing we had a share of Sholapur mills. Does he want that the parapets should be divided into three parts? I am amazed at the idea of those wanting a provision which in law cannot possibly be given and nobody can insist upon that. They can inquire as much as they like whether the particular document in question is genuine. That I admit but if the document is genuine, I hope this House will not be inveigled into the belief that you want an actual division for the purpose of what otherwise any three other persons might hold as property. Sir, I support the amendment".

Res judicata. This legal principle does not apply to Income-tax decisions, and partition assessments once allowed by an Income-tax officer in any one year can be withheld in another year if fresh facts come to light. In such cases the mode of assessment reverts to that of joint status. What effect such a situation will have under the new Act, where assessments can be reopened for 8 years in certain cases, remains to be seen.

Assessment. This is detailed below. The special provisions of section 25A have been inserted because otherwise no assessment would be possible on a Hindu undivided family between the end of the last previous year and the date of partition, when after partition the family, as such, ceases to exist. Under the old Act there were several decisions in regard

to trading families, and as such, the new Act provides that the special provisions apply up to the date of partition, whether or not a partnership between the erstwhile members has since been effected. (See *"Assessment after Partition", infra*).

A Hindu undivided family is assessed as a single unit—a fact which enhances their rate of tax and in many other respects puts this class of assessee at a distinct disadvantage. Many a ruse has been devised to have assessments made on the individual members. We have the old, old story of a bogus partnership deed prepared after alleged partition and presented to the Income-tax Officer year after year with an application for registration as a firm—and as regularly rejected by him. Other methods, more intelligent, have proved successful, but the whole points to general discontent against this method of assessment. The matter was raised before the Enquiry Committee, and sympathetically considered by them. A perusal of their report, however, shows that apart from technical difficulties, a strong argument against abolition of the bulk assessment system was the considerable risk to the Revenue that would be involved in a change over. (Enquiry Committee Report, page 24).

Once the total income of the family has been assessed the shares of the members are no longer assessable in their hands—they are not even included in their individual assessments for rate purposes. [Section 14 (*1*) read with section 16 (*1*)]. This applies even in cases where the total income of the family is below the assessable limit—a marked difference from the case of unregistered firms.

Residence. The status of a Hindu undivided family has been defined by the new Act and considerably affects the assessments of families, the whole or part of whose income accrues or arises outside British India.

A Hindu undivided family is resident in British India if the control and management of its affairs is situated wholly in British India [section 4A (*b*)]. It is ordinarily resident in British India if its manager is ordinarily resident in British India. [Section 4B (*b*)].

For further details re Residence and its effect on assessments, see under *"Residence"*.

Allowances. Life Insurance premia paid on behalf of any male member or of the wife of any male member of the family is allowed as a deduction, subject of course, to being included in the total income for rate purposes and to the statutory maximum

of one-sixth of the total income, or Rs. 12,000, whichever is less. [Section 15 (2) & (3)].

Assessment after partition. A Hindu undivided family continues to be assessed as such until a claim is made by them to the effect that a partition has taken place. [section 25-A(*1*)]. Unless this claim is made, the old method of assessment continues, whether or not the property has been partitioned. [section 25-A (3)].

There is no statutory method of notifying a partition. All that the Act enjoins is that the Income-tax Officer should satisfy himself that the partition is genuine and then record an order to this effect. He is permitted to make any enquiry into the matter he may consider necessary, but no order can be passed unless notices of such an enquiry have been served on all the members.

In practice, a claim is made in the form of a letter notifying that the Hindu undivided family as such ceased to exist from a certain date. The Income-tax Officer then issues notices to all the members asking them to appear on a certain date, along with any evidence they may wish to produce in support of the claim. They are then interrogated and if the Income-tax Officer is satisfied, he records the order laid down in the Act and proceeds to make separate assessments. [See *"Succession"*].

Though partition is possible without a deed (which incidentally entails a heavy stamp duty according to the value of the property to be partitioned), the Income-tax Officer generally insists on the production of one and rejects the application in its absence, unless any other evidence of a convincing nature is forthcoming.

An important amendment has now been made making separation by metes and bounds unnecessary. All that is now necessary is that the members should have expressed a desire to separate and that the once common property should have been partitioned in distinct portions. Continuance of a common mess, worship and residence will not affect the issue if the partition can be proved genuine.

In most cases, assessment on the members individually results in a reduction of tax. This puts the Income-tax Officer on his guard and each case is viewed with a certain amount of suspicion leading to an unfortunate tussle between the members and the representative of the Revenue. The Revenue generally wins, unless the members can put up a first class case.

HIRED MACHINERY, PLANT & FURNITURE.

Special reference is now made to these in the new Act. [section 12 (3)].

Income from such a source is assessable under the head 'Other Sources' unless the assessee makes the hiring a regular business.

The section as originally drafted, provided for an allowance of depreciation only as per section 10 (2) vi. This was extended by the Assembly to its present form and now permits of deductions at the time of assessment on account of insurance premia, current repairs, depreciation and obsolescence—(sections 10 (2) iv to vii.)

Where, however, the assessee's *business* consists of the hiring of machinery, plant and furniture, the section on business with all relative allowances, will presumably apply.

It should be noted that these allowances are only permissible when the machinery, plant or furniture let out are the property of the assessee.

HOUSE PROPERTY (SEC. 9).

This section applies only to income from house property consisting of "buildings or lands appurtenant thereto" *of which the assessee is the owner.* "Appurtenant" has been defined as meaning "usually enjoyed with or occupied with".

Income from house property outside British India or from vacant or waste land, *hats,* ground rents etc. is taxable under section 12 (see *Other Sources*). Similarly rents received from property held on lease.

Where the owner of the property carries on a business, the whole or part of the property used for such business purpose is exempt from tax. Where, however, the business is carried on by another, the owner of the property is in the position of a landlord and taxed on the rents received. This applies even in cases where the owner is a company, firm or association of persons. The new Act, however, provides that this exemption applies only in cases where the business is of a nature assessable to income-tax. This affects possibly clubs and other mutual concerns (*see under Clubs*). The exact line of demarcation between this section and sections 10 and 12 (business and other sources) has, however, given rise to many difficulties. The Allahabad High Court has held that income from stables erected on land sub-leased in portions by a lessee is assessable under 'other sources'. The fact that property is owned by a business concern, or purchased from the funds of the business, and the proprietorship and letting is conducted after the style of a business, does not necessarily imply that the income should be treated as coming within the ambit of section 10 (business).

Confusion also arises in cases of a composite nature, for example, where clubs let out a portion of their premises to members or non-members and charge an inclusive daily rate for rent, messing, light, etc.

Bona Fide Annual Value. The Act makes the "B. A. V." the basis of assessment. The Income-tax Manual defines this phrase as "the full market value at which a building could be let from year to year irrespective of any charges by way of municipal rates or taxes thereon". It therefore differs from the actual annual rent payable on a long term lease or the actual rent payable on a yearly lease under a privileged rental or with tenant's liability to pay owner's rates or taxes.

From the foregoing it is evident that the fixing of a figure for assessment is no simple matter. The valuation shown on the municipal bills is a rough guide, but these are available only in the larger cities. In district towns, the bills for local rates furnish some assistance, by working back on the percentage taxed. The area in which the property is situated has also to be taken into consideration, and the original cost of the land and building is sometimes useful as a basis for computation.

The actual rent received, however, is in practice the method most generally adopted—after the addition of a suitable percentage in the case of privileged rentals.

Property occupied by the owner. The final assessment on property occupied by the owner for residential purposes is limited to one-tenth of his total income. It should be noted that 'total income' is made up of only sums taxable under the Act, and excludes items such as agriculture, etc.

This gives rise to many a ridiculous situation, for example, where a palatial residence is to be assessed in the hands of a person who has a large income from agricultural lands and a petty or no income from other sources.

Where only a portion of a building is occupied by the owner, and the remaining portion let, this provision will apply to only that portion in which he resides.

A person may have several residences, for example, in a city where he works, and in his native village. In such cases the one-tenth assessment applies to the several 'residences' taken together as constituting one unit.

Allowances. Seven allowances are specifically provided for by the Act and are given below, along with short explanatory notes. Expenditure, wherever necessary, has of course to be proved.

(1) & (2) *Annual repairs*—An arbitrary figure of one-sixth of the B. A. V. has been fixed as the allowance for repairs, irrespective of the amount actually expended on this item.

The method of arriving at this fraction of one-sixth is also provided for and is roughly as under.

(*a*) In cases where the property is occupied by the owner, or where it is let and the owner has undertaken to bear the cost of repairs, the allowance is computed on the actual B. A. V.

(*b*) Where the letting contract enjoins that the tenant is responsible for repairs, the difference between the B. A. V. and the rent paid by the tenant, up to a maximum of one-sixth of the B. A. V.

The reason behind this latter provision is obvious. Where a tenant agrees to bear the cost of repairs, the natural presumption is that the rent demand is reduced by a notional figure for current repairs that will be necessary during the period of tenancy.

Insurance

(3) The amount of annual premium paid to insure the property against risk of damage or destruction is the only item of its kind allowed under the Act as a deduction.

Executive instructions have, however, been given to the effect that premiums paid against risk of loss of rent may be allowed as a deduction, provided the assessee agrees to pay tax on any sums received as compensation from the insurance company as the result of a claim.

(4) (*a*) Interest paid on a mortgage or capital charge effected on the property.

(*b*) Any annual charge on the property. (This amended wording permits of deductions for charges other than interest and ground rent and was inserted on the recommendation of the Income-tax Enquiry Committee Report, page 31). The Committee also suggested the restriction of interest allowances under this section to interest paid only in respect of a mortgage or other charge by the assessee or in respect of money borrowed specifically for the acquisition of the property or for its repairs, removal or construction (Report, page 48). This suggestion has not been adopted.

(*c*) Ground rent paid for the land on which the property is built.

(*d*) Interest on capital borrowed for purchasing, constructing, repairing, renewing or reconstructing the property.

Interest is allowable whether paid or incurred.

(5) Sums paid on account of land revenue for the land on which the property is built.

(6) Rent collection charges up to a maximum of 6% of the B. A. V.

The old Manual interprets this allowance as 6% of the B. A. V. as arrived at after deducting any allowance for vacancy. There is no statutory support, however, for this assumption.

(7) *Vacancies*. This allowance is based on the net figure arrived at after deducting allowances (1) to (6) from the B.A.V. If the property has been vacant for 6 months, half this net

figure will be allowed ; if vacant for 3 months, one-quarter, and so on.

During the Assembly debates on the amending Bill, it was pointed out that buildings were often let out in parts or flats, and that this allowance should also be extended statutorily to cases in which certain flats or parts only remained vacant, and not necessarily the building as a whole. The amendment was carried and will be appreciated by owners of such property, particularly in large cities where letting on the flat or room system is the rule.

In practice, however, computation of the allowance is likely to cause confusion where numerous parts are involved and possibly the remedy lies in apportioning the B.A.V. among the various sections and treating each with its own allowances as one complete whole.

Set off. An important concession has been introduced by the Amendment Act. Up to 31/3/39, a loss under this section could not be set off against profits from any other source, nor could any such loss be carried forward. These restrictions have since been withdrawn and the new provisions will apply to all assessments made from and including 1939/40 onwards.

Extra concessions. In addition to the seven allowances mentioned above, executive instructions contained in the Income-Tax Manual (old) permit the following further deductions at the time of assessment :—

(1) Legal expenses, subject to the following provisions:

(*a*) Only nett legal expenses, that is, expenses after deducting any costs recovered from the opposite party will be deducted.

(*b*) The actual expenses, incurred in excess of the costs so deducted will be allowed in the year in which the decree is passed : a further allowance for costs proved to be irrecoverable will be given later, if necessary.

(*c*) The total allowance for collection charges including legal expenses allowed must, of course, not exceed the statutory 6 per cent.

Municipal tax s Occupiers taxes paid to a municipality are, in practice, allowed. A heated argument centred around the non-allowance of similar taxes payable by the owner, without any success.

The Enquiry Committee (Report, page 30) have, however, suggested that executive instructions should issue to the effect that in computing the annual value of property, allowance

should be made for charges borne by the owner, levied specifically in respect of services, *e.g.*, water and conservancy, rendered to the occupier of the property. This possibly includes pumping charges and the like, but whether the recommendation will be adopted, only time can tell.

Interest. Interest may be either paid or incurred to qualify for allowance under this section. No interest payable to a person resident outside British India will, however, be allowable unless tax has been deducted thereon at source and paid in to the Authorities (see *Deductions at Source*).

This restriction does not, apply to cases where the interest paid is on a loan issued for public subscription before the 1st April 1938 or where the non-resident has a local agent from whom tax can be recovered in the normal course.

Joint Ownership. A new sub-section [section 9 (3)] provides that where property is owned by two or more persons in definite shares, the share of each person will be included in his total income, and no assessment made on the joint owners after the manner of an "association of persons".

The reasons for this amendment are given below (Income-tax Enquiry Committee's Report, page 25):—

"(*i*) *Joint ownership*. One High Court has held that joint ownership of property constitutes the joint owners an "association of individuals" assessable as such. It will be readily seen that the tax payable on the present basis may be either more or less than the tax that would be payable if the income were assessed in the hands of the individual owners. For example, two persons own property in equal shares, which yield an income of, say, Rs. 9,000, each of them having other income in excess of Rs. 40,000. In this case, the Rs. 9,000 would be assessed at 9 pies in the rupee although the rate of tax appropriate to the individual assessees is 2 annas 1 pie.

Another example may be given. A and B, each with a personal income of Rs. 400, share equally the joint ownership of property producing Rs. 3,000. Taken individually each has an income of Rs. 1,900 upon which no tax is payable, but assessing the Rs. 3,000 as the income of an association of individuals, the tax payable is Rs. 94."

B. A. V.—Dwelling House. We have used the term "dwelling house" as it is the one most commonly employed by Officers of the Department when referring to property in which an assessee resides as distinct to that portion which he lets out to others.

We have already stated above that the maximum B. A. V. in this case is one-tenth of the total income. As the total income includes the sum finally assessed on the dwelling house after the deduction of the statutory one-sixth for repairs, etc., the following formula will be useful.

Suppose X = net value of dwelling house.
Y = other income.

$$X = \frac{X+Y}{10} \times \frac{5}{6}$$

$$= \frac{5X+5Y}{60}$$

$$60X = 5X + 5Y$$

$$55X = 5Y$$

$$X = \frac{Y}{11}$$

In short, to ascertain the net value of the dwelling house for income-tax purposes, take one-eleventh of the total income from remaining sources.

HUSBAND AND WIFE [SEC. 16 (3)].

Income of Husband and Wife. In the United Kingdom, husband and wife are one for income-tax purposes. In India, there is a sort of modified fusion.

A husband's income includes for income-tax purposes—

(*a*) income of the wife or minor child from membership of a firm in which her husband is a partner.

(*b*) income of the minor child, not being a married daughter, from assets transferred directly or indirectly otherwise than for adequate consideration or, in the case of a wife, in connection with an agreement to live apart.

(*c*) income of any person or association of persons from assets transferred, otherwise than for adequate consideration, for the benefit of the wife or minor child or both.

This is the law which has been in force for a few years now with minor alterations and it has already caused difficulty.

Wives are frequently given presents at the time of marriage but the facts are difficult to prove after 15 or 20 years of married life.

Any evidence that is available should be produced before the Income-tax Officer and he should be asked to note it in his assessment order even though it is not accepted. A copy of the note of assessment can then be obtained and kept in support, not only of the evidence but of the fact that it has been offered. Sometimes affidavits are acceptable evidence. Banks should be asked to record any evidence there is of a wife's income being derived from sources independent of the husband.

Assets can be transferred to major children but in this connection the note on settlements should be read.

Any income the wife earns on her own account or any income from assets she has inherited or had given to her by people other than her husband is her own, and she herself will be taxed on it. The residence rules will be applied to her individually.

Gifts from Husband to Wife. As for income from gifts from the husband to the wife, the position is not plain. Mr. Chambers in the Council of State was asked what would be the

position if a wife invested the odds and ends of pin money given to her by her husband. He replied that any Income-tax officer with common sense would treat the income as her income. The writer knows of no Income-tax Officer with common sense enough for that. The officers say that such income is the income of the wife from assets transferred to her by her husband and certainly in the discussion on section 16 (3) it was admitted that an irrevocable transfer of assets from the husband to the wife did not serve to decrease his income. Is a gift anything more than an irrevocable transfer of assets?

However, it is not difficult to arrange matters so that within two years the wife can prove that she has got the assets in her own right, and husbands and wives who have joint accounts and joint shares should take expert advice on the point.

Husband not resident, Wife resident. Any remittances not included in the total income of the husband for tax purposes under the Act are deemed to be the income of the wife.

Thus, if a husband lives in Chandernagore while his wife lives in Calcutta, any remittances from income earned in Chandernagore is held to be her income but remittances from salary earned in Calcutta are not taxable in her hands. [Sec. 4 (2)].

If the husband pays tax elsewhere and the wife pays here, whether double income tax relief will be available is very doubtful. The same doubt arises when a wife has U. K. income taxed with her husband's and is taxed alone in India.

HUSBAND & WIFE—WIFE'S OWN INCOME

As far as the wife's own income and taxability in India goes the position is fairly simple and has been explained in the section—"Husband and Wife". When the wife's income is from U. K. securities or dividends the position is very obscure.

For the purposes of the U. K. Act the wife's income is considered the husband's income. The husband gets a refund according to the principles explained under the heading "Personal Refunds in the U. K. to Non-residents". The refund depends on the size of family, etc.

In British India, the wife of an ordinary resident will be taxed on her own foreign income. Her husband is taxed in the U. K. She is taxed here. Will any double income-tax relief be allowed? Unless they get executive instructions it seems safe to argue that the wife will not get double income-tax relief.

The wife can change her investments into one of those few which are tax-free to non-residents of the U. K. but the question of yield may stop her.

She might, under certain circumstances find that it pays her to transfer them to her husband. It will put up his rate of tax in British India but he will, at any rate, get double income-tax refund. Let us hope that executive instructions will be issued putting this right.

INDIAN STATES RESIDENTS (SEC. 1).

The Act applies also in the Indian States and tribal areas to British subjects who are in the service of the Crown or of a local authority established in the exercise of the powers of the Crown Representative or the Central Government in that behalf and to all other servants of the Crown in the said States and tribal areas.

In other words, a servant of the British India Government in these States and areas comes within the Act.

Section 7 (2) lays down that any income which would be chargeable under the head salaries, if paid in British India, shall be deemed to be so chargeable if paid to a Crown servant in any part of India or to a servant of a local authority established by the Crown.

Section 4 (*1*), Explanation 2 says that income which would be chargeable under the head salaries if payable in British India and not being pension payable out-side *India* shall be deemed to accrue and arise in British India wherever paid if it is earned in British India.

The effect of all this is—

1. The British India Government servant earning his pay in an Indian State is liable to tax.

2. The private employee earning his pay in an Indian State is not liable but, of course, if he is a resident in any year within the meaning of section 4A it will be foreign income and liable if brought into British India. If not brought in, it will be liable with the Rs. 4,500 exemption.

Note here that both the full resident and the not ordinarily resident are liable on a business controlled in, or a profession or vocation set up in India (*i.e.*, British India *plus* the States).

3. Government pensioners living in Indian States do not come under the Act by virtue of section 1 nor by virtue of section 7 (2) but by virtue of section 4, explanation 2, their pension is deemed to accrue and arise in British India and so by virtue of section 4 (*1*) (*c*) it is taxable.

If the pension has been earned by service half in British India and half in Indian States, presumably half the pension is taxable but the position is obscure. See below.

4. Private pensioners living in Indian States. The position is the same as in 3 above.

In the case of 3 and 4, section 42 is relevant. It makes taxable in the hands of a non-resident all income arising from a source of income in British India. From this section it would appear that the whole pension is taxable in any case.

INSURANCE COMPANIES.

Insurance Companies are now assessed according to the schedule to the Act.

I. Life Insurance Companies.

Life Insurance business is defined in para. 5 (iv) as having the same meaning as in section 2 (*11*) of the Insurance Act, 1938.

Assessment is made on the greater of :—

A. "Gross external incomings" of the preceding year, less "management expenses".

B. The annual average of the actuarial surplus, less half the bonus allocation, *i.e.*, the annual average of the balance, subject to certain adjustments.

Method A.

(*a*) "Gross external incomings" are defined in para. 5 (ii), but how the "profits from reversions and on the sale or granting of annuities" is going to work in practice in the absence of an actuarial valuation, it is too early to conjecture.

Gross external incomings are defined in para. 5 (ii) as "the full amount of incomings from interest, dividends, fines and fees and all other incomings from whatever sources derived".

The following should also be noted :—

(*i*) Profits on the realisation of securities are totally exempt, as also premium income.

(*ii*) Income from House Property owned by the Company is excluded from the business assessment but re-assessed separately under section 9. (See *House Property*).

(*b*) "Management expenses" comprise expenditure normally incurred by a Life Insurance Company exclusively in the management of its business, and includes commission. Where the Company transacts other business as well, a fair proportion of the general management expenses (on the basis of the sums shown in the general Profit and Loss Account) is allowable in addition to the items appearing in the Revenue Account of the "Life" section.

The following items are inadmissible:—

(*i*) Bonus and claims paid to Policyholders.

(*ii*) Depreciation and loss on the realisation of Securities.

(*iii*) Any expenditure inadmissible under section 10. (See *Business*).

The maximum allowance for management expenses is restricted as below.—

(*i*) 7½% of Single Premiums and First Year's premiums on policies on which the premium is payable for a period less than 12 years.

(*ii*) 85% of First Year's premiums of other policies.

(*iii*) 8½% of all renewal premiums.

Method B.

(*a*) This is on the lines of the procedure laid down in the old rule 25, subject to certain modifications, the chief of which are:—

(*i*) Half of the bonus allocaton to policyholders is to be allowed as a deduction.

(*ii*) Any surplus or deficit included in the surplus or deficit as disclosed by the last preceding actuarial valuation and relative to an earlier valuation period, is excluded.

(*iii*) Where the valuation period is more than 12 months, the credit for tax paid at source on security and share investments will be the annual average income-tax deducted at source during the period.

The effect of these last two provisions is to make section 18 (5) inoperative in such cases, and to nullify the judgments of the Privy Council and the Calcutta High Court in the cases of the Himalaya and North British Insurance Companies.

(*b*) The adjustments reffered to under head B are:—

(*i*) Any inadmissible expenditure as per section 10. (See *Business*).

(*ii*) In the first computation on this basis no deduction will be allowed in respect of the bonus allocation to the extent to which it is paid from any surplus relative to a previous valuation period.

(*iii*) Where any bonus allocated to the policy holders and previously allowed as a deduction for Income-tax purposes is subsequently forfeited, it shall be added to the surplus disclosed by the valuation.

This provision appears meaningless as such an occasion is hardly likely to arise in practice.

(*c*) *Depreciation and Appreciation* (para. 3*b*).

Depreciation or loss on realisation of securities or other assets are allowed as a deduction provided they are written off or made provision for in the accounts or through the Actuarial valuation Balance Sheet.

Similarly Appreciation is, under the same circumstances, treated as income.

This corresponds to the old Rule 30.

(*d*) *Tax Free Securities*

The interest on these is totally exempt.

Income-Tax Officers' Powers (para. 3b Proviso)

If the Income-Tax Officer, after consulting the Superintendent of Insurances is of the opinion that the liability on outstanding policies has been intentionally over-valued and assets similarly under-valued, he may reduce the figure of reserves etc. to a level consistent with one which in his opinion represents the true state of affairs.

II. Dividing Societies or Assessment Businesses.

The net income is taken at 15% of the premium income, and in the case of Non-resident Companies, at 15% of the Indian Premium Income.

III. In all other Cases.

The computation is made in the same manner as for ordinary businesses (see section 10 *Business*). An allowance is, however, made in respect of profits and losses on the realisation of investments and depreciation on the value of investments in the same manner as for Life Insurance business. And in the same way any appreciation of, or profit on realisation of securities if taken credit for in the accounts will be treated as income.

IV. Non-Resident Companies (other than Dividing Societies or Assessment Businesses).

The methods set out in Paras. I, II and III are adopted wherever possible. Otherwise the assessment is based on the following formula (old Rule 35).

$$\frac{\textit{British Indian Premium Income}}{\textit{Total Premium Income}} \times \text{Total World Income}$$

V. Mutual Insurance Companies.

Para 9 now makes these Companies taxable in a manner similar to other Insurance Companies.

The above, we believe, to be correct but the following doubtful points should be noticed :—

Rule 2 Proviso. Are the restrictions of the scope of the "management expenses" allowance applicable to both methods (*a*) and (*b*)?

The reason for the doubt is that the "Consolidated Revenue" account of all Insurance Companies includes "management expenses".

Proviso (*a*), however, refers to such expenses of the "preceding year", a term which does not fit in with a strict interpretation of the actuarial method which is usually based on a five years' average.

Rule 3. Similarly with the word "surplus". This word appears only in Rule 2(*b*) and in its ordinary meaning connotes the surplus disclosed by the actuarial valuation balance sheet.

Moreover, "gross external incomings" and "management expenses" are only a part of the total receipts and disbursements of the Company and the difference certainly cannot be counted as a "surplus" remaining to the Company.

On this argument, Rule 3(*a*) cannot, in our opinion, be said to apply to the method applied in Rule 2(*a*).

Further, the bonus allocation to the policyholders is part of the surplus disclosed by the actuarial valuation, which arises partly from the excess premiums charged to policyholders, chiefly in the case of "with profits" policies. An allocation of bonus out of this part of the surplus represents actually a repayment of such excess premium paid by the policyholders. In equity, therefore, this part of the bonus allocation should not be taxed in the hands of the Company. Probably owing to this reason, the reduction of half the bonus allocation from the surplus was provided for in Rule 3(*a*).

If this was really the intention of the legislation, then this benefit cannot apply to method (A) because the premium receipts do not come into the calculation of the "gross external incomings".

Rule 3 (b). A reference to Rule 5(*ii*) and (*iii*) will show that profits on the realisation of securities, and depreciation of

and losses on securities are to be excluded from the "gross external incomings" and "the management expenses".

In the assessment under para 2(*a*), only two features arise, *i.e.* "gross external incomings" and "management expenses". There is no provision in para 2(*a*) for including any other item of income or expenditure in the assessment to be made on that basis. So it is difficult to see how Rule 3(*b*) can be applicable to Method (A).

Super-tax. Para 3(*a*) exempts interest on tax free securities when computing the surplus but this paragraph, as read with section 58, seems to imply a total exemption from super-tax also.

Further, this concession seems to be more after the style of those in section 4(3) than in section 17(2).

INSURANCE AND PROVIDENT FUND RELIEF.

Exemption in the case of insurances. This relief is limited to one-sixth of total income or Rs. 6,000, whichever is less (section 15). In the case of a Hindu undivided family, the limit is Rs. 12,000 or one-sixth.

The following also earn relief :—

(*a*) Insurance premiums paid for a life insurance or deferred annuity insurance on the life of the assessee or on the life of the assessee's wife or husband (section 15).

(*b*) Contributions to Provident Funds under the Provident Funds Act of 1925. This affects only certain classes of Government or semi-Government servants (section 15).

(*c*) Insurance premiums on the life of any male member of a Hindu undivided family or the wife of any male member if the assessee is a Hindu undivided family (section 15).

(*d*) Any sum deducted in the case of a Government officer for securing a deferred annuity or making provision for his wife and child in accordance with the conditions of his service (section 7 Proviso).

(*e*) The contributions of an employee to a recognised Provident Fund and the interest on the balances. (Section 58F).

The limitation of one-sixth is based on total income and not taxable income but for this particular purpose an employer's contribution to a recognised provident fund, and interest received from the fund are not included in total income. See "*Total Income*".

The relief is given at the rate applicable. That rate is settled by the total income of an assessee [sec. 3 & sec. 17 (2)].

INTEREST ON SECURITIES (SEC. 8).

Interest on securities. There is not much to write about here. Interest from securities is dealt with on the cash basis. Section 8 refers to income received. Securities include debentures, and Reserve Bank Shares.

Interest from securities is dealt with in the United Kingdom on the fiscal year basis but in India on the previous year basis.

Thus, an assessee who keeps his account for the calendar year will be assessed in 1939/40 on interest actually received in 1938.

Against this income, there can be set off interest payable on money borrowed for investment in the securities.

If, however, the interest is payable outside British India it cannot be set off against the income unless tax has been deducted at source at maximum rates on that interest or unless some one can be appointed agent under section 43.

The general intention of all this is clear enough but the wording certainly seems unfortunate. Under section 43, any person having business connections with a non-resident or through whom the non-resident is in receipt of interest can be appointed an agent. Therefore, if it is a resident who is being assessed on income from securities and who is paying interest to a non-resident it seems idle to say that there must be some one who can be appointed agent.

In any case, under section 18 (3-*A*), if interest is payable to a non-resident, tax must be deducted at the maximum rate or the payer will be held responsible.

It boils down to this therefore :—

If the assessee is a resident who is being assessed on income from securities he cannot set off any interest on money borrowed from a non-resident unless he has deducted tax at the maximum rate from the interest and has sent it to the Income-tax officer.

If the assessee is himself a non-resident he cannot claim set off of the interest on money borrowed unless there is some one in India who can be appointed agent and made responsible for the tax.

The section does not say what the position is if the borrower does not attempt to set off the interest paid on money borrowed. Is the lender still liable? The answer is presumably

yes and the borrower will be liable to pay the tax due. In that case the Revenue will benefit doubly.

The wording of section 8, however, suggests another doubt. Interest payable outside British India is not chargeable as an expense unless tax has been deducted under section 18 *or* there is some one who can be appointed an agent. As pointed out, the payer can certainly be appointed agent. Therefore it looks as if such interest payable outside India can be charged as an expense but under section 18 (7) the borrower can be held liable for the tax.

Under section 18 (3-*A*), however, the tax deduction should be at the maximum rate while under section 18 (7) the liability can only be at the appropriate rate.

If therefore a well-to-do resident paying a high rate borrows from a poor relative he can charge up the interest and be liable himself only at the poor relative's low rate.

If he borrows from a bank abroad, he will be liable to pay at the maximum rate if he does not deduct at the maximum rate so he should either deduct at the maximum rate or else not charge up the interest at all. The person at the other end may of course get double income-tax relief.

It is clear that the whole position will need thought. It may be best for the borrower to get himself appointed agent for the lender so as to see everything put through properly.

Bank commission is a chargeable deduction against income from securities. Assessees will realise that if they want to charge up bank - interest it is highly advisable to keep the securities in a separate account quite apart from the current account. Otherwise it is almost impossible to prove that they have borrowed in order to invest.

INTEREST ON SECURITIES FREE FROM UNITED KINGDOM TAX IN THE HANDS OF NON-RESIDENTS.

The following securities are exempt from United Kingdom tax and sur-tax if they are in the beneficial ownership of persons not ordinarily resident in the United Kingdom or form part of the foreign life assurance fund of an assurance company :—

3½% War Loan

4% Funding Loan (1960-1990)

4% Victory Bonds.

LEGAL AVOIDANCE.

Ethics of legal avoidance. Much has been heard of this subject lately. In official circles it is called legal evasion and there is held to be something disreputable and even dishonest about it.

After several years experience the writer has come to the conclusion that legal avoidance is not only inevitable but that it is in fact desirable.

There is no such thing as equity in matters of taxation. Gladstone said that the best place for money is in the pockets of the tax-payer. All taxing laws contradict that. In the United Kingdom it is considered wrong to make the family man pay as much as the bachelor. The Assembly debates disclosed a good deal of sympathy for that view and even official sympathy. In that reading of equity, the Indian Acts are iniquitous.

Under the old Act, the man who paid for capital expenditure on his house in India by a sterling cheque escaped tax. The man who brought his income to India and paid the contractor here suffered tax. Is the wise man to be dubbed a scoundrel?

Under the new Act, the man who leaves India on March 30th is likely to find himself in the future paying less than the man who leaves on April 2nd. Is he dishonest for clearing out a week before he really wanted to go?

The law, as it stood, appeared to permit double taxation and one official order said that in a certain case it was inevitable. Was the person who passed that order a ruffian?

It is no good looking for any scheme of equity in a Taxing Law. No one knows what equity is and no one will ever agree with any one else about it. All that taxing laws, whether income-tax laws or rating laws or any other laws, can aim at is uniformity. That is frankly the object of the Rating and Valuation Act of 1925 and as a High Court said recently—the only way of securing uniformity is by applying the strict letter of the law and securing uniformity by taxing everyone on the same basis under the same conditions. Failure to achieve uniformity in India is due more to the fact that the provincial High Courts may differ than to the practice of legal avoidance.

It has been laid down again and again by the highest Courts that a man is entirely free to arrange his affairs so as not to attract tax.

The idea that all assessees will, by some unrehearsed unanimity display the same amount of carelessness is fanciful. The alternative is to hope that they will all show the same power of keeping to the minimum liability. At any rate, self interest is then a powerful unifying factor.

In the debates on the bill, the Government representatives quoted authorities to show that in the United Kingdom the public attitude towards legal avoidance had changed a good deal of late. While not attempting to dispute that very obvious fact, it is only right to point out that there are, in India, two very potent reasons why, if uniformity is the main object of the Act, the attitude of the public should not change in India yet awhile.

1. In the United Kingdom assessees return their income honestly according to their lights. In India this is not so. Many a firm with a turnover of 10 lakhs or more will return consistently an income of Rs. 3,000 or so. Now there is no reason why such a firm cannot make a loss. It can lose all its capital but, taking them all by and large such firms cannot as a rule make profits on this small scale. It would be better for them to invest their working capital in Government securities and sit back in dignified idleness. Uniformity is not to be achieved unless the honest assessees take every possible legal step to avoid taxation. The dishonest assessee will not take such steps because he is essentially secretive and therefore is averse to taking any expert advice.

The writer has no hesitation in saying that legal avoidance is a powerful factor in making the tax uniform.

2. Legal avoidance is the obvious reply to tax-snatching. In the United Kingdom, the officer is prepared to take a common sense view of a transaction. In India, the officer takes the purely legal view and no one who has conducted Income-Tax cases will deny that the Income-tax Officer assesses as producing income transactions which no commercial common sense decision would hold to be profitable. Nor are the Assistant Commissioners, even the new Appellate Assistant Commissioners much better.

To take a simple example—The income of the husband includes that of the wife from assets transferred. Husbands and wives who married twenty years ago and did not know that twenty years later this law would be passed, cannot possibly be expected to produce documentary proof of the fact that the wife has income apart from her husband. In the United Kingdom, statements would be accepted. In India they are rejected.

To take another example—A foreign manufacturer supplies goods to an Indian subsidiary which in its first few years must work at a loss. For accounting purposes the subsidiary credits the main company with interest and once a year the whole loss, working loss and interest is debited to the parent company. Under no circumstances would any accountant, business man or man of common sense say that the parent company was making anything out of the Indian subsidiary but the Department strives hard, by shutting its eyes, to argue that the parent company should be taxed on the interest.

A third example. Mr. Chambers says that under no circumstances can an assessee be taxed twice on the same income. A rigid interpretation of the old Act made double taxation possible and a circular of a Commissioner enjoined it. Any one who practises in this line knows how often an Income-Tax Officer will say that to include certain income is all wrong but he must do so and force the assessee to appeal or else that he does not think he ought to tax certain income but will not take the responsibility for not doing so.

These are commonplaces and they are simple examples of tax snatching. Unless the tax snatchers are scotched, the legal avoiders cannot be blamed.

Unless the genuine statement of a husband and wife is accepted, can they be blamed for taking the very obvious legal way of getting their incomes separated?

Taking India as it is, whether reason and common sense should be allowed to have any sway is doubtful. It is probably preferable that the tax snatcher and the legal avoider should both do their worst but it is quite certain that no public feeling against legal evasion can be worked up until the attitude of the Department itself is changed radically. The sort of purely legal inspection from the Inspecting Assistant Commissioners and the very fact that Mr. Chambers himself is inspecting are powerful factors against that change.

LEGAL AVOIDANCE—PREVENTION OF

This subject has had a lot of attention. The frustration of legal avoidance is one of the main objects of the new Act. The subject falls into three main heads.

A. Husband, wife and children. [section 16 (3)]. The total income of an individual includes:—

(*a*) wife's share in a firm of which the husband is a partner.

If it is an unregistered firm paying its own tax, the husband's total income will include his wife's share as well as his own but of course neither share will bear tax again.

If it is a registered firm, both the husband's and the wife's share will be taxed in the husband's hands.

It may be noted that if the wife really starts the firm and has separate independent income of her own, she may save tax by putting her husband in as a partner. The profits of the firm will be diverted to him for taxation purposes.

(*b*) The minor child's share in a firm of which his father is a partner.

(*c*) Income from assets transferred directly or indirectly to a wife by the husband otherwise than for adequate consideration or in connection with an agreement to live apart.

If the wife can manage to buy the assets from money she has inherited or borrowed on her own account, the income from those assets will not be included in the income of the husband.

There is apparently no limit to what a husband can give to his wife in consideration for an agreement to live apart. This reveals a truly cynical outlook on the part of the authors of this Act but appearances are deceptive for nothing is said about the continuance of such an agreement. For those husbands and wives who are continually falling in and out of love, the moral is plain.

(*d*) Income from assets transferred directly or indirectly to a minor child, not being a married daughter, by such individual otherwise than for adequate consideration.

(*e*) Income from assets transferred otherwise than for adequate consideration to a person or an association for the benefit of minor child or wife or both.

B. Income from Settlements or Trusts. [Sec. 16 (*1*)*c*]. There shall be included in the income of the settlor:—

(*a*) When assets are transferred—all income arising to any person by virtue of a revocable transfer of assets;

(*b*) when assets are not transferred—all income arising to any person by virtue of a settlement or disposition, whether revocable or not.

A settlement, disposition or transfer shall be deemed to be revocable if it contains any provisions for the re-transfer, directly or indirectly, to the settlor, disposer or transferor of a right to reassume power directly or indirectly over the assets or income.

This clause does not apply to any income arising to any person by virtue of a settlement or disposition which is not revocable for a period exceeding 6 years or during the lifetime of the settlee and from which income the settlor or disponer derives no direct or indirect benefit but the settlor is liable to be assessed on the income as and when the power to revoke arises.

The last proviso seems to confuse matters considerably.

If this proviso was simply a definition of "revocable" or "irrevocable" it would be clear what was meant by (*a*) above, and (*b*) income would be the income of the settlor in any case. But the proviso says that the clause does not apply at all when the settlement or transfer is for over six years. and it seems therefore that if the settlement etc. is for say seven years the income is the income of the settlee, transferee etc. so long as the settlor etc. derives no direct or indirect benefit, whether assets are transferred or not.

Those last words again leave much in doubt. If a settlement is made on a mother, whom the settlor would have to support anyhow, and if the result of the settlement is to give to the mother during her lifetime her own income thus saving the settlor from expenditure, is that an indirect benefit? Presumably not though there is clearly room for argument.

Can part of salary be settled? In the case of Government servants, that appears to be impossible by virtue of section 6 of the Transfer of Property Act, but what about others? Is salary payable to an employee necessarily his income in spite of the fact that he has settled half of it irrevocably on some one else and has to pay it over? Does the fact that the employer recognises the settlement and pays the settlee direct make any difference?

In this connection, a very recently decided Bombay case is of interest. A managing agency getting a large agency commission from a manufacturing concern found it difficult, but yet essential to raise fresh finance for the manufacturing concern. They found a financier but had to give that financier a share in their managing agency commission.

The Court held that the share of the financier was not the income of the managing agents at all. That decision is likely to have many interesting repercussions. It is true that section 12A now looks specifically after this point but the decision referred to was passed before anything like section 12A existed and if managing agency commissions which so far as they are certain much resemble salaries and so far as they are uncertain are from intangible sources, can be diverted at source, what about business profits, commissions and plain salary? It is too early to be didactic on this subject.

These notes offer only food for thought.

C Transfers of Assets. (Section 44D).—

(*a*) Assessees cannot divest themselves of income by transferring assets directly or indirectly, by straight means or devious to non-residents or to residents not ordinarily resident [section 44-D(*1*)].

(*b*) Any sums received as loans or repayment of loans or as otherwise than income, shall be deemed to be income if the arrangement has been made with a non-resident or not ordinarily resident person [section 44-D (*2*)].

It is virtually impossible to condense the wording of this section with effect, but the wording is so wide that it prevents avoidance of tax through distribution or transfer of income of any sort in connection with non-residents or residents not ordinarily resident.

(*c*) Assessees cannot divest themselves of taxable income by selling securities or shares with a collateral agreement or an option to buy back. This is done to enable some one else to claim the dividend and is now for income-tax purposes not to be recognised. The interest or dividend remains the income of the seller (section 44E).

There is also a provision that when a stock dealer buys with agreement or option to resell and receives that income, it shall not be treated as his income.

(*d*) General avoidance by selling with dividend (section 44-F).

The Income-tax officer can, if he thinks that 10% of the tax which would have been payable has been avoided, treat the income of persons, who are buying and selling for the purpose of avoidance of tax, on an accrual basis.

Those who are interested in this line of thought must sit down and study Chapter V-B word by word. These sections clearly frustrate some of the simpler and more obvious means of avoiding tax but the writer takes leave to doubt whether they are really going to stop the determined avoider.

LOCAL AUTHORITIES [SEC. 4 (3) (*iii*)]

There is a new provision. It is now intended to tax the income of local authorities from supplying commodities or services outside its jurisdiction.

For instance, the sale of water to other municipalities or to shipping will come under this heading.

Very few local authorities will be affected but such as are should recast their accounts. A fair share of general supervision and possibly of loan charges can fairly be debited against these profits.

MANAGING AGENCY COMMISSION.

The Privy Council in the case of *Tata Hydro-Electric Agencies* v. *Commissioner of Income-tax* (64 I.A. 215: 1937, Bom. 388: 41 C.W N. 774: A.I.R. 1937 P.C. 139: 1937 I.T.R. 202) held that part of a managing agency commission payable to another, was not an allowable deduction in the assessment of the managing agents. This hardship has now been remedied by virtue of the provisions of section 12-A, a new section.

The section enjoins, however, that before such an allowance can be availed of, the share of commission should be payable under an agreement for adequate consideration and that the managing agent and the co-sharers under the agreement should file a declaration before the Income-tax Officer showing the proportion in which the commission has been shared between them.

On their satisfying the Income-tax Officer as to the genuineness of the transaction, each party will then be assessed only on the share to which he is entitled under the agreement.

This concession has been brought about mainly as a result of representations made to the Income-tax Enquiry Committee that commission paid by managing agents from their agency commission to subscribers in order to secure subscriptions to the capital of the company were not allowed as a deduction by the Department..

In a further case just reported a firm of managing agents definitely assigned a portion of their managing agency commission to a financier in repayment of a loan taken for the main company.

The Bombay High Court held that, in view of the assignment, the income assigned ceased to be any further the income of the managing agents; and that even in the absence of an assignment, the commission paid was of the nature of expenditure incurred solely for the earning of profits and gains and as such allowable as a deduction in the hands of the managing agents.

MARGINAL RELIEF—INCOMES JUST ABOVE Rs. 2,000.

Under the old Act, with the step system and rates of tax over the whole income, there occurred sudden changes in the amount of tax payable and the man on Rs. 15,010 paid so much more at 16 pie than the man on Rs. 14,999 at 12 pie that his net income after deduction of tax was much less than with the smaller income. To meet this difficulty the old section 17 was devised. That has now disappeared.

With individuals now, the first Rs. 1,500 of income is free of tax. After that the next Rs. 3,500 pays tax at 9 pie but no one with income of Rs. 2,000 or less is to pay and those with incomes just over Rs. 2,000 are limited to half the excess over Rs. 2,000. Thus, a man on Rs. 2,040 would pay tax on Rs. 540 at 9 pie, or Rs. 25/5, but he is limited to half of Rs. 40, or Rs. 20. Above Rs. 2,051 this provision ceases to have any effect. This is laid down in the Finance Act.

METHOD OF ACCOUNTING (SEC. 13).

Method of accounting to be followed. The Act lays down no hard and fast method of accounting and as such the system regularly followed by a particular assessee will form the basis for the computation of his assessable profit or for arriving at the figure of loss that is to be set off or carried forward (section 13).

The maintenance of proper accounts, and books of such a nature that will enable his profits or losses to be readily worked out at the end of an accounting period, is the primary duty of an assessee. Where such a condition does not exist, he has only himself to thank if the Income-tax Officer rejects his accounts as unreliable, and arrives at an estimated figure in excess of what the assessee would consider appropriate to his case.

Theoretically speaking, and in view of the numerous advantages to be gained by the maintenance of proper accounts (apart from a correct Income-tax assessment), it would appear that cases where no proper books have been kept would be few and far between. Unfortunately, however, this has proved in practice to be the rule rather than the exception and the causes can be traced to the large percentage of illiterate men in the business field, and the inability of the smaller houses to afford the services of any sort of accountant.

Executive instructions in the Manual and in circulars issued to the Department enjoin that assessees should be sympathetically treated and given every assistance in compiling and substantiating their returns, and in the Presidencies this advice has to a large extent been followed. In some provinces however, the examination of books of account takes on the appearance of a mere farce and books are rejected on grounds highly technical and relative to a system of accounting far superior to the standard generally expected from petty business houses. A flat rate chosen from a list of 'average' percentages compiled by the Department is then applied to the figure of sales (or to an estimated sale where the book figure is considered inadequate) and the assessment completed. An appeal results in a further severe scrutiny and an exploitation of more technical flaws, and generally results in the assessment being either confirmed or enhanced.

The Income-Tax Enquiry Committee have in their report (page 72) shown a sympathetic appreciation of the true position, and with the advent of the Tribunal it is hoped that their recommendations will be followed and assessments based on "the intelligent consideration of the broad facts of each case" to the exclusion of "comparatively unimportant matters of detail".

Cash system of accounting. Under this system, a record is maintained of only cash receipts and actual payments, entries being made only when cash is actually received or paid out. This system has numerous disadvantages, particularly the uneven distribution of profits and losses over a period of years and is fast dying out. Executive instructions have been issued to the effect that in computing profits or losses in such cases, the difference between the opening and closing stocks should be taken into account, but these are hardly necessary as without such figures, profit or loss cannot be correctly ascertained.

When the cash system is followed, any allowances under the Act are similarly construed and deductions for interest, rent etc. given only for payments actually made. Similarly, with the exception of stocks, only sums actually received are taken into account. The question of bad debts does not of course, arise. There is also the danger that if, say, two or three years rent is paid in one lot the Income-tax Officer would try to argue that he can only allow the rent necessary to earn the year's profits. It is a bad argument but there it is.

Mercantile System. This system is gradually supplanting the other and is followed by all the large business houses as the only scientific method.

Under this system, entries of receipts and payments are made on the date of the transaction, irrespective of whether cash has actually passed. At the end of the accounting period, a profit and loss account is drawn up taking into account the stocks at the opening and closing of the year.

As such, any expenditure allowable as a deduction under the Act is treated as 'paid' on the date it was incurred, irrespective of whether it was actually paid in cash or not. Opening stocks are added to the figure of purchases, and closing stocks to that of sales. Bad debts are allowable subject to special provisions made in this connection. (See *Bad Debts* infra).

Method of accounting regularly employed. (Para 51. Income-tax Manual). "(*i*) The method of accounting regularly employed by an assessee for the purposes of his business should, so far as possible be the method adopted for working out his

profits for income-tax purposes ; but the Income-tax Officer has to decide whether that method of accounting is the one regularly employed for the purposes of the assessee's business and whether it is such as to reflect clearly the taxable profits for the 'previous year'. In most cases this should cause no difficulty. Doubtful cases should be referred to higher authorities. As an example of the principles to be followed in settling doubtful cases two instances of such cases are given. It is the practice amongst certain merchants to prepare their accounts on the basis of the mercantile accountancy system in respect of transactions between themselves and members of their own community, but on the basis of cash payments in the case of transactions between themselves and their customers. Provided that the same system is continuously employed, there appears to be no reason why this particular practice should not be considered to be a "method of accounting regularly employed". Again there are cases where the various branches of a business are only closed once in three or five years and where the accounts of the branches are not annually incorporated in the headquarters business's accounts. In such a case it might be possible to assess either on the average annual profits of the branches as disclosed by the accounts last filed or on the actual profits brought to account owing to particular branches closing in particular years.

(*ii*) The cases in which an assessee desires to change his accounting system should be rare and where such a request is made, the Income-tax Officer in considering it should, as in the similar case of a demand for a change in the 'previous year' (para. 6), if he is prepared to allow the change, take steps to secure that no profits escape taxation on account of the change. While section 13 leaves it to the discretion of the Income-tax Officer to decide whether a particular system of accounting should be accepted or whether a change in the system of accounting should be allowed, the discretion of the Income-tax Officer in this matter can be questioned in the course of an appeal against an assessment under section 30, *i.e.*, it may be made one of the grounds of appeal in contesting the assessment of the profits."

Stocks. The closing stock in any one year must agree with the opening stock of the year immediately succeeding it in quantity and value. As such, the assessee cannot value one at market price and the other at cost when he finds it to his advantage to do so.

Doubts sometimes arise as to whether the valuation of closing stock at market rate, where this is lower than cost, would affect an assessment. This fear is, however, unfounded,

as the method most commonly followed by commercial houses is to value at whichever is less. The Income-tax Officer would, however, be justified in applying any suitable test to ascertain whether the valuation has been correctly made, and in refusing to accept the stock figures as correct if he is convinced that the assessee's conception of "market value" is far below the true position.

In the case of manufacturing concerns, partly finished stocks are generally valued at the cost to the manufacturer of the raw materials delivered at the factory door plus labour charges incurred up to the date of valuation. Where goods have not been taken delivery of, it is the cost delivered at the port or warehouse where they are lying that may be taken into consideration. The valuation should always be based on fact, without the addition of fictitious freight and other charges.

Goods whether paid for or not, are the virtual property of the assessee and should be included in his stock valuation. Doubts arise, however, in cases where no bill of lading or other such document has been passed to the assessee, so that he has no power to dispose of the goods until payment is made. On the other hand goods despatched from a foreign country and lying in the warehouse of the bankers who hold a lien on them until such time as payment is made, cannot strictly be construed as the stock of the bankers until the goods are actually seized for failure to honour the draft, particularly if interest and godown rent is being charged to the assessee. If, however, the supplier's contract permits of the goods being returned if found defective, or, in the event of deterioration, in certain circumstances, a reduced value cannot be applied. Valuation thus appears to be a matter to be judged by the facts of each case.

Where market value is under-rated in one year it should be rectified by adjustment in the next, otherwise the profit and loss account does not reveal the true position.

The following extract from the Income-Tax Enquiry Committee's Report (page 74) is of interest, while on the subject of stocks :—

"A further point as to which representations were made to us in a few areas was the practice of rejecting accounts entirely where there was no proper stock valuation or where a quantitative day to day stock account was not maintained. It is true that in many cases accounts are worthless unless they include authentic stock accounts, but we saw some cases in which the question of stock was only a minor factor and the entire rejection of the accounts, without any attempt to base an estimate of income thereon, on the ground of absence of stock accounts was unreasonable."

This coincides with the views of the High Court in several decisions. Views which some officers of the Department have for some reason seen fit to ignore.

Contracts. Difficulties arise in cases where contracts are spread over a period of years. In practice, assessments are based on the amounts received or billed as running payments during each year and actual expenditure during that period allowed, provided that both income and expenditure relate to the part of the contract completed during the year.

In the case of very large contractors, however, and where there is no danger to the revenue, the profit finally resulting on completion of the contract may be made the basis of assessment and either taxed as the income of that particular year or distributed over the period.

Where the profits for each year are easily ascertainable, an annual assessment in the normal manner is made.

Similarly with consignments. Until the suspense account is closed by transfer to the profit and loss account no income arises for taxation.

Production of accounts. Executive instructions provide that every encouragement should be given to reliable auditors and that where an audited balance sheet and profit and loss account is produced, the assessment should be based on the examination of these mainly, the books being examined only when any special points that require solution or further detailed explanation arise.

Unfortunately, however, the services of these professional men are in the majority of cases not availed of and the duty of scrutinising the accounts and searching for evidence of possible fraud devolves on the Income-tax Officer. It is in these cases that this official is inclined to be over zealous and assessees are led to complain of undue harassment in the calling of three years' books and documents of a petty nature. The Income-tax Officer is, however, not without his trials and it must be admitted that his task is in most cases far from pleasant. It is only by co-operation between the assessor and the assessee that this state of affairs can be improved on and in fairness to the Department it must be admitted that in many cases accounts are so unreliably kept that total rejection and estimate is the only alternative. That the Administration realise the position and are attempting to remedy it, is evident from the following extract:—

INCOME TAX ENQUIRY REPORT, 1936, Page 75.

"The assessee of small income in some Circles receives at times what cannot be described as sympathetic treatment, notwithstanding

the instructions in paragraph 86 (*ii*) of the Income Tax Manual. We think that in the case of small traders who keep no proper books, tactful and sympathetic discussion with the assessee is likely to lead to results which, while fair to the Revenue, would involve no hardship and should leave no justification for any feeling of grievance. We may add that in many Circles, cases are so handled with satisfactory results. The extension of this desirable practice should be one of the aims of the Inspecting Officers whose appointment we propose in Chapter XVI.

(*d*) *Application of flat rates of profits.* Much has been said on the subject of the application of standard rates of profit when estimates are made on a turnover basis. The complaints may be reduced in the main to allegations that the rates are not impartially ascertained, that the highest rate of profit found in any business in a given class of trade is treated as representative of that class, and that the rate applicable to one class of trade is sometimes applied to businesses not strictly within that class or to businesses having special features which make that rate inappropriate.

It is true that some estimation of the rate of profits is necessary in many cases, but it should be remembered that even when fairly ascertained, the "standard" rate of gross profit for a given class of trade is merely the average of a number of actual rates with possibly a wide range of variation. It follows that these rates, however carefully computed, should be applied with discretion and with regard to the special circumstances of the individual case. A further point that should be mentioned is that it is generally more correct to apply a gross rate of profit and to deduct working expenses from the result than to apply a net rate of profit directly to the turnover. A suggestion made that trade associations should be allowed to co-operate in computing these standard rates which should be applied to all cases where accounts are not accepted, is in our opinion quite unacceptable, since this procedure would result in either general under-assessment or in over-assessment in some cases balanced by under-assessment in others."

NON-RESIDENTS—AGENTS OF

Agents of non-residents. Any person employed by or on behalf of a person residing out of British India or having any business connection with such person or through whom such person is in receipt of any income can be served with a notice from the Income-tax Officer notifying his intention to treat such person as agent (section 43).

The only exception is the case of a broker who does not deal with a non-resident principal but with a non-resident broker.

No person can be made an agent without first being heard by the Income-tax Officer. There is no appeal against the order of the Income-tax Officer but, as always, a reference can be made to the Commissioner under section 33 for executive orders. See also *ante, "Assembly Promises"*.

Any person appointed the agent under section 43 becomes liable (under section 42) to be treated as the assessee, and liable to pay tax on the whole of the assessee's profits.

The agent may then find himself in a very awkward position because he may not know anything about a great deal of the non-resident's activities in business or money lending in British India.

Where there is disagreement between agent and non-resident, however, the law affords some inadequate protection. The agent can retain out of money payable to the non-resident a sum equal to his estimated liability on behalf of the non-resident and if he and the non-resident cannot agree about this the agent can obtain from the Income-tax Officer a certificate as to what he should retain. When such a certificate has been obtained, the agent's responsibility for payment is limited to the amount of the certificate *plus* anything else he may have in his hands at the time of assessment.

So far so good but there are several points in this arrangement which deserve consideration.

Where there is no disagreement between agent and non-resident. What happens if there is no disagreement between the non-resident and the agent? The agent may be dealing with only a fraction of the non-resident's activities. The amount he retains may be ample to cover the tax on what passes through his hands but quite inadequate to cover the total tax due. He

can only get the Income-tax Officer's certificate in case of disagreement. Without it he is liable for the whole tax. He must comfort himself with the thought that under section 18 (3*A*) any one who is not an agent must deduct tax at the maximum rate and be responsible for the tax due. The Income-tax Officer thus has two people on whom he can count for payment and since the other person who paid the income chargeable cannot plead ignorance whereas the agent may be able to do so, the agent will presumably not suffer though the law does not make it clear. That, however, covers only income-tax and not super-tax.

Supposing again that the agent does get the necessary certificate, he becomes liable up to the amount specified in the certificate. Having got the certificate and never having been able to collect the amount mentioned, he may still be liable for payment himself.

Having got a certificate and having retained the amount he is only liable for further amounts in his hand. Without a certificate he is liable for the whole amount of the tax and super-tax. It seems clear that agents will be well advised to force a disagreement and make sure of getting the certificate.

NON-RESIDENTS—LIABILITY OF (SEC. 42)

The Liability of non-residents extends to—

(*a*) All income accruing or arising, directly or indirectly through or from any business connection in British India.

These very wide words have been whittled down in the past by executive orders. It is desired so far to tax only those trading *in* India and not to tax those trading *with* India. Nor has it been considered desirable to tax profits from consignment business. The instructions in the manual may be seen. What consignment business means is clear enough to the commercial mind but has never been very clear to the official mind and recent developments seem to indicate that a very much stricter view is being taken on this point.

(*b*) Income from any property in British India.

(*c*) Income from any source in British India.

(*d*) Income from interest or money lent and brought into British India in cash or kind.

Under section 4(*1*) (*a*), the non-resident is also liable to tax on all income from whatever source derived, received or deemed to be received in British India.

The rate and amount of tax of a non-resident is fixed by section 17. In the case of British subjects and subjects of Indian States, the rate is fixed by the total world income.

Suppose the total world income of such a person inside British India and outside is W which, if taxed, would be liable to T income-tax and super-tax and that his taxable British Indian income is I, then the tax payable is I/W of T.

In the case of a non-resident foreigner, income-tax is at the maximum rate and super-tax at the rate fixed in the same manner as for a British subject.

It should be noted that although section 17 purports to deal with all persons, which includes a company, it has no practical effect on the taxation of a company, whether a British company or a foreign company treated as such under section 2(*6*). The rate of tax being uniform for companies, the consideration of foreign income cannot affect the rate.

Section 42 is one of the least considered but one of the most important sections in the Act. Its wording is extremely wide and enables the Revenue to tax the profits of all business

dealings with India. With the constant need for more and more money, this section offers the greatest temptation to the Revenue and the temptation must be all the stronger in that in the case of British firms it makes no difference to the assessee if the section is applied literally. Any tax levied in India is all recovered through the double income-tax relief procedure and mostly in the United Kingdom. In other words, the British Indian authorities can help themselves to money out of the pockets of the United Kingdom. The temptation must be almost irresistible and it is safe to prophesy that the British Indian Revenue will soon be able to say, with Oscar Wilde, that they can resist anything but temptation. With ordinary manufacturers the task of bringing them all into the register simultaneously is so stupendous that it is difficult to attempt it but there are some lines which offer less difficulty, *e.g.*, foreign insurance companies.

As stated above, United Kingdom concerns can face the future with equanimity but non-British or Colonial concerns should watch the situation very carefully and get a thorough grasp of section 42.

Section 42 (3). So far we have assumed that the taxation of non-resident firms which operate in India is to continue as before but this sub-section, which is entirely new, may make a very big difference.

The great bulk of these concerns are manufacturing abroad and selling in India.

At present, there are two main methods of calculating the liability of such concerns. One is to take the head office accounts and work out the world profit under the Indian law and then allocate to India a proportion of the world profit based on the turnover. It is the Rule 33 method and Rule 33 still exists.

The other method is used when the assessee keeps separate accounts for India. The home office invoices the Indian branch on some basis, sometimes on a standard market basis, if there is such a thing, sometimes on cost plus 10%. Starting with those "purchase" prices, the Indian accounts are made up as if the Indian concern was a separate concern, some sort of percentage on turnover or some percentage of cost for home office overheads being put against Indian gross profits.

In these cases, the Income-tax Officer adjusts the "purchase" prices to what he thinks are the head office costs and so, in any case, the profit calculated for India includes a part of the manufacturing profit.

As stated above, Rule 33 remains, but it would seem that section 42 (3) makes a very radical change because it lays down that only that part of the profits reasonably attributable to that part of the operations carried out in British India shall be taxed.

Much play can be made with arguments about the meaning of "deemed" and distinctions will be sought between those concerns which buy raw produce or manufacture in British India and those which manufacture abroad and sell in British India, but the writer takes leave to doubt whether all this amounts to much.

The plain meaning of section 42 seems to be not that all profits accruing from a business connection in British India shall be deemed to be income accruing within British India but that only such part of the profits as arise from operations carried out in British India shall be deemed to accrue in British India.

That indicates as clearly as it seems possible for words to indicate that when a non-resident assessee manufactures abroad and sells in India, only the selling profits are to be taxed. How those profits are to be calculated may raise difficulties but the sensible course seems to be to try to work out what an independent concern would get out of a selling agency and in most lines there is no very great difficulty about that. The British Indian profits would then be calculated at say 10% of the sales turnover, less expenses in British India.

For a firm to be non-resident, the control and management must be wholly outside British India. That is impossible for a European firm with British Indian offices.

For a company to be non-resident, it is sufficient to show that the control and management is only partly in British India and, of course, to show that most of its profits arise abroad.

If, therefore, a foreign manufacturer has Indian offices and is not a company, he is treated as a resident (and ordinarily resident) and pays tax on world profits.

If a foreign company has offices in British India it is or can be treated as a company here and is then a non-resident unless most of its profits arise in British India. That makes section 2 (6), which defines "Company", a matter of vital importance to non-British concerns.

The whole question is thrown into the melting pot by the new definitions of residence but it seems clear that non-British-

Indian companies must study this section very carefully before making their returns.

One effect of section 42 (3) is to preclude, normally, the possibility of nil assessments because it is difficult to imagine anyone taking on a selling agency under normal conditions without a certainty of some profit whereas, under the present method indicated by Rule 33, if there is a world loss, there is automatically an Indian loss.

Another very curious situation arises if this interpretation of section 42 (3) is correct.

Suppose a company is treated as a non-resident company for several years and is taxed in British India on its selling profits only. If that company makes a world loss, its computation of British-Indian profits will exceed its computation of total profits. It then becomes a resident company. Section 42 then ceases to apply and normally Rule 33 will apply. If its British-Indian business is only a small proportion of its total business, the losses in British India on the proportionate basis will be less than the losses abroad so the company will be still treated as a resident company and will carry forward its world losses to its next British Indian assessment.

If, however, the company sells most of its output in British India, its losses here will be more than its losses abroad, so it will be non-resident and section 42 (3) will apply and it will be taxed on its selling profits.

Thus, the method of computation of British Indian profits, as well as the decision as to what profits and losses are to come into the computation, will depend on the working results of the company.

This is extremely confusing and time alone will show how it is to work out.

Non-residents are liable on what is deemed to arise and accrue in British India under section 4 (1) (c). This includes dividends paid outside British India out of profits subjected to income-tax in British India. (Section 4 (1), explanation 3).

Therefore, under section 18 (3E) the paying officer must deduct company super-tax on dividends paid to non-resident companies.

This is best illustrated by an example.

Suppose a man with a wife and three children earns Rs. 1,000 per month, or £900 a year in India and has £100 gross dividends in the United Kingdom on which tax at 5/6*d*. or £27/10 is deducted at source.

If he were living and earning his living in the United Kingdom, his gross income would be: —

	£
Salary	900
Dividends	100
Total £	1,000

His allowances would be: —

	£
Earned income allowance at one-fifth of earned income ...	180
Married allowance	180
Three children's allowance	180
Total £	540

Taxable income £460.

	£	s.	d.
Tax:—£135 at 1/8*d*.	11	5	0
£325 at 5/6d.	89	7	6
Total	£100	12	6

But only one-tenth of his total income is from the U. K. source so his taxation is limited to 10% of £100-12-6, or £10-1-3 and the rest of the £27-10 or £17-8-9 is refundable, so that he pays net £10-1-3 on dividends of £100 gross. His rate of tax is therefore 2 sh. in the £.

In India, under the new Act, this man, if a full resident, will pay Indian tax on £1,000 or Rs. 13,333. The tax is Rs. 971/5 and the rate 13.99 pie of 1/5½d. in the £. The double income-tax relief procedure will give him back 1/5½d. in the £ either in the U. K. or in India.

This illustration neglects the 4500/- exemption.

OTHER SOURCES OF INCOME (SEC. 12).

"Other sources". Section 12 is compendious and is an attempt to attract within the scope of a single section all taxable income which is not specifically provided for elsewhere in the Act.

An attempt to draw up in catalogue form an exhaustive list of income assessable under "other sources" would be well nigh impossible, but the following examples will be of some guidance to the reader:—

Distinguishable from "Salary" Income. Royalties, annuities paid by insurance companies or persons other than employers, subscriptions to an employee's account from provident fund and other trusts, annuities in lieu of compensation for loss of employment, alimony or separation allowance received by a wife or ex-wife, and maintenance paid by other than an employer.

Distinguishable from interest on Securities. Dividends less interest paid on loans taken for the purchase of the shares, interest on loans and bank deposits or mortgages (other than usufructuary), including interest collected after the winding up of a business.

Distinguishable from House Property. Ground rent, income from waste or vacant land, *bustis,* stables and other temporary structures, illegal cesses levied by landlords. To these should be added receipts not treated as agricultural, (See under *Agriculture, Para. A. Revenue Receipts,* infra) other than salary paid to the co-owner of an agricultural estáte.

Distinguishable from Business. Income from markets, moorings, ferries, fisheries (including lease of fishing rights), salt manufacture, quarries, etc.,—where the transactions in these are not of a nature sufficient to make them assessable under the head "Business".

Expenses. Section 12 (2) allows as deductions at the time of assessment any expenditure, other than capital, incurred solely for the purpose of earning the profits or gains being assessed. As such, depreciation, obsolescence etc. cannot be claimed.

Interest on money borrowed for the purchase of shares can be set off against the dividend receipts, provided that a banker's certificate or other proof is furnished in support of the claim that the money was borrowed specifically for this purpose.

PENALTIES

These are divided into three classes:

A. Fines leviable by the Income-Tax Authorities.

B. Fines and penalties imposable by a magistrate in the event of a prosecution being launched.

C. Recovery in certain cases of tax and super-tax from those making payments on which tax and super-tax is deductible at source and payable to the Income-tax Authorities, in the event of their default so to deduct and pay the tax.

These three classes are considered separately under paragraphs A, B and C below. A prosecution cannot be launched on the same facts for which a penalty has been imposed by the Income-Tax Authorities (section 28 (4)).

A. Fines levied by the Income-Tax Department (SECTION 28).

(*i*) Returns of income.

There are two methods of calling for such returns and the penalties for non-compliance with a notice issued vary according to which method is adopted:—

(*a*) by a *general* notice in the press or otherwise.

(*b*) by a *special* notice served on the assessee by name. In each case the penalties are ***in addition*** to the tax and super-tax finally levied on total income.

Offence	*Maximum Penalty*
Failure to comply with a *general* notice, where the income finally assessed is over Rs. 3,500 ...	1½ times tax and super-tax finally levied.
Ditto below Rs. 3,500 ...	Nil
Failure to comply with a *general* notice where the assessee is the agent of a non-resident ...	Nil

Note:—Illiteracy is sufficient cause for non-compliance with a general notice (see *Assembly Debates*, p. 3859).

Offence	*Maximum penalty*
Failure to comply with a *special* notice	1½ times tax and super-tax finally levied.
Failure to comply with a *special* notice when income is finally found to be below Rs. 2,000 ...	Rs. 25.
(*ii*) Failure to furnish evidence called for by the I. T. O. after submission of a return [Sec. 23 (*2*)] ...	
(*iii*) Failure to produce books or documents called for by the I. T. O. after compliance with a general notice or after the expiry period of a special notice, whether return in the latter case has been submitted or not [Sec. 22 (*4*)]	1½ times the difference between the tax and super-tax finally found payable and that calculated on the basis of the return submitted.
(*iv*) Concealment of income or deliberate misstatement of actual income in return submitted	
(*v*) Partnership income of a registered firm distributed on basis other than that shown in partnership deed, resulting in partner showing a smaller figure under partnership income in his personal return ... Penalty leviable on partner and based on his total income	

NOTE (*i*). The correction of a return or the submission of a fresh return before the date of final assessment does not condone a deliberate omission or wilful misstatement made in the previous return.

NOTE (*ii*). The Income-tax Officer cannot impose any of the above penalties without the approval of the Inspecting Assistant Commissioner and in each case the assessee must be given a reasonable opportunity of being heard [secs. 28 (3) and 28 (6)].

NOTE (*iii*). The Income-tax Officer can re-open an assessment or make a fresh assessment within 4 or 8 years from the end of the year in which the income accrued or was received. (See under Re-Opening of Assessments, *infra*). In such cases a *special* notice calling for a return is to be issued and similar penalties for non-compliance are leviable.

B. Penalties on prosecution before a magistrate (SECTIONS 51 and 53).

The following penalties are leviable if the offences have been committed without reasonable cause or excuse. The assessee is given the opportunity of proving the contrary :—

<table>
<tr><th></th><th>Offence</th><th>penalty</th></tr>
<tr><td>(i) Compulsory deduction of tax at source on certain payments, as also on salaries attached by the I. T. Authorities for non-payment of tax (See Deductions at Source and sec. 46 (5)).</td><td>Failure to deduct tax at source and pay to the I. T. Authorities through the stated channel.</td><td rowspan="4">A fine up to ten rupees a day for each day the default continues (Sec. 51).</td></tr>
<tr><td>(ii) Furnishing certificate to those from whom tax has been deducted at source and to share holders on payment of dividends (See Deductions at Source and sec. 20).</td><td>Failure to furnish such certificate.</td></tr>
<tr><td>(iii) Submission of returns, compulsory or optional, referred to in Chapter on Returns (infra) other than return of income called for by general notice.</td><td>Failure to submit return (or comply with notice) in due time.</td></tr>
<tr><td>(iv) Production of books or documents called for by the I. T. O. after expiry of period for submission of return, whether return called for by special notice has been submitted or not. [Sec. 22 (4).]</td><td>Failure to produce such books or documents within time stated in notice.</td></tr>
</table>

	Offence	*Penalty*
(v) Power of I. T. O. and A. C. or their representative to inspect and take copies of share, debenture, and mortgage registers. (Sec. 39).	Refusal to permit such inspection or taking of copies.	A fine up to ten rupees a day for each day the default continues. (Sec. 51).
(vi) Returns mentioned in (iii) above, *including returns of income called for by general notice,* but excluding optional returns other than those due from business associations, and depreciation and house property allowance claims. [Parts (I-VI) of the return form.]	Deliberate misstatement in verification clause of any of the relative forms.	Simple imprisonment of six months or fine of one thousand rupees, or both. (Sec. 52).
(vii) Application for registration of a firm. (Sec. 26A).		
(viii) Appeal to Appellate Asst. Commissioner or Commissioner.		

No prosecution can be launched for any of the above offences without the sanction of the Inspecting Assistant Commissioner, who is also authorised to compound such offence even after prosecution has been launched.

It should be noted that no prosecution can be launched for failure to submit a return called for by a *general* notice.

C. Recoveries where deductions are made at source. Where deduction at source and payment to the Income-tax Authorities is enjoined, those wilfully failing are personally liable to make good to the Revenue such tax and super-tax if they do not pay in such sums or if the actual assessee subsequently defaults. Penalties also are possible.

Interest paid to non-residents on which tax has not been paid at source, and cannot be recovered from the payee, is not

allowed as a deduction in the assessment of a business or profession or of income on securities.

An incomplete return renders the assessee liable to an *ex-parte* assessment on an income estimated by the Income-tax Officer to the best of his judgment.

Business about to close down.

OFFENCE.	PENALTY.
Failing to give at least 15 days notice of intention to close down business.	A sum equal and in addition to the tax finally levied. Sec. 25 (2).
Non-payment of tax assessed on a business, profession or vocation carried on by a firm or association of persons (discontinued) or on an association of persons dissolved.	Liability of each member or partner jointly and severally for the tax assessed, and liability also for separate assessment on such income in addition to his own. (Sec. 44).
Failure to furnish a return showing dealings in securities (see *Returns*, para. D(i) *infra*).	An initial fine up to Rs. 500 in addition to a similar fine for each day the default continues after the infliction of the first penalty of Rs. 500. (Secs. 44T & F).

Non-payment of Income-tax and super-tax demanded. The demand is likely to be doubled if not paid within the date specified in the notice of demand, or by the date of expiry of any extension granted by the Income-tax Officer.

Such a drastic course, however, is seldom or never adopted at the start, the practice being to impose a nominal fine at first, and increase the figure gradually as the default continues, until in very obstinate cases the maximum fine leviable (an amount equal to the original income-tax and super-tax demanded) is reached.

Judicial Proceedings. See *Assessment*.

The following punishments are leviable :—

	OFFENCE.	PENALTY.
Sec. 193 I.P.C.	Intentional giving of false evidence in any stage of the proceedings, or fabricating false evidence for use in any such stage.	Imprisonment up to seven years and a fine at the discretion of the Court.

	OFFENCE.	PENALTY.
Sec. 228 I.P.C.	Intentionally offering any insult to, or causing any interruption to a public servant sitting in any stage of a judicial proceeding.	Simple imprisonment up to six months or a fine up to Rs. 1,000, or both.
Sec. 196 I.P.C.	Corruptly using or attempting to use as true or genuine, any evidence known to be false or fabricated.	Simple or rigorous imprisonment up to seven years, and a fine at the discretion of the Court.

Disclosure of information by the Income-tax Authorities. After perusing the foregoing paragraphs, it will be well to close this chapter with a summary of the penalties to which the Income-tax Authorities themselves are liable in the event of disclosure of any information that may come into their possession as a result of the powers conferred on them by the Act. (Sec. 54).

It is also worthy of note that no court, except as detailed below, can compel the production of or statements from any returns, accounts, documents or records, filed with the Income-tax Department.

OFFENCE.	PENALTY.
Disclosure by any officer of the Income-tax Department of any particulars contained in any statements, returns, accounts, documents, evidence, affidavits, depositions or records made before them or filed with or gathered by them.	Imprisonment up to 6 months and a fine at the discretion of the court.

What are not offences. The following are *not* considered offences under this section.

(*a*) Any disclosure made to the Court in connection with a prosecution under the Act (para. B, above).

(*b*) Disclosure to any other persons administering the Act.

(*c*) Any disclosure occasioned by the service of a notice or the recovery of a demand.

(*d*) Disclosure to a Civil Court in the event of any proceeding arising from the execution of this Act, where Government is a party to the suit.

(*e*) Disclosure to the Accountant-General of a province to enable him to ascertain and certify to the Auditor-General of India the net proceeds of any tax or duty, in whole or in part, in or attributable to any area.

(*f*) Giving of any necessary particulars to the Auditor-General of India or to the Central Board of Revenue to enable them to audit Income-tax receipts and refunds.

(*g*) Disclosure of particulars to any persons competent to try an official of the Income-tax Department in any enquiry into his conduct.

(*h*) Any disclosure resulting from the impounding of an insufficiently stamped document.

(*i*) The giving of any particulars to a United Kingdom, Dominion or State taxing authority, in connection with an assessee's claim to double income-tax relief.

(*j*) The giving of particulars to a Provincial Government to enable that Government to levy or realise any tax imposed by it on agricultural income.

(*k*) The giving of necessary particulars to anybody to exercise powers under the Customs or Excise Acts.

(*l*) The giving of information that will enable a returning officer to ascertain whether or not an assessee is entitled to vote.

(*m*) Disclosure to any appropriate authority as to whether or not a person has been assessed to income-tax in any year.

(This possibly applies to cases where a tax like the Bengal Employments tax is imposed only on such persons as pay income-tax).

(n) The giving of information to a court, or the production of any document, declaration, affidavit, deposition or statement filed in connection with the partition of a Hindu undivided family or the registration of a firm.

All the proceedings against Income-tax Authorities, under this section require the previous consent of the Commissioner of Income-tax.

Ex parte assessment. This penal method of assessing those who have failed to file a return, or to furnish evidence called for in part or in whole, in each case within the time allowed by the Income-tax officer, is fully discussed under *Ex Parte* assessment and need not be repeated here.

An important point, however, while on the subject of penalties, arises in connection with appeals.

An appeal is now permissible against an *ex parte* assessment (Section 30). The old provision allowing an assessee to show cause before an Income-tax Officer as to why he could not submit a return or comply with a notice (section 27) has also been retained.

Any assessee with experience of the usual fate of a section 27 appeal will naturally prefer the appeal to the Assistant Commissioner and ignore that to the Income-tax Officer. By so doing, he renders himself liable to the penalties provided for in section 28 (*1*) for non-submission of a return and non-compliance with notices calling for evidence. (See *Penalties infra*). The reason for this is that in ignoring his opportunity of showing cause before the Income-tax Officer and appealing to the Assistant Commissioner only against the quantum of assessment, he is tacitly admitting that non-compliance was not due to "sufficient cause."

It would thus appear that the old section 27, retained by the Select Committee out of the best of motives, is likely to be turned to an assessee's disadvantage by the Revenue.

The cautious assessee will approach both the Income-tax Officer and the Assistant Commissioner and address a further appeal to the Assistant Commissioner if the Income-tax Officer does not agree that he had sufficient cause for non-compliance.

It will be seen from the foregoing that the Act as it now stands bristles with penalties but the following extract from the speech of Mr. Chambers in the Council of State (Debates, page 62) is, to a certain extent, comforting, if only because of the assurance given that assessees will not be at the mercy of frivolous officers of the Department:—

"Then Clause 5 (of the Amendment Bill) also provides for the setting up of a Headquarters staff. In regard to this I might say that there is in India at present no staff at headquarters comparable to the technical staff at Somerset House which controls and advises the whole of the Income-tax staff throughout the U. K. The object in having such a staff, first of all, is to impose a more thorough check upon the imposition of penalties. The Bill provides, as I have already mentioned, for much larger penalties and penalties which may extend back to eight years. Well, it is felt that responsibility for imposing such penalties, which can of course be very large in some cases, should not rest entirely on the local officer, but there should be some system of centrally controlling penalties. So some officers are required to "vet" penalties throughout the country. . . . . . In saying this I should have said the amendments of section 5 provided for in Clause 6."

PLACE OF ASSESSMENT

Place of assessment. With a network of Income-tax officers scattered throughout British India, the need for some hard and fast method of mapping out their individual jurisdictions will at once become apparent.

The basic rule is for a person to be assessed by the Income-tax Officer having jurisdiction over the place where he resides, or, in the case of the business assessee, over the place where his principal place of business is situated [section 64 (*1*) and (*2*)].

Where, however, an assessee has no fixed abode, or the existence of several branches of the same business makes the selection of the 'principal place' difficult, the matter is referred to higher authorities.

If the various places from which a selection is to be made in such circumstances are in one province, the decision of the Commissioner of Income-tax of that province is final; where two provinces or more are involved, the matter is settled between the respective Commissioners and in the absence of an agreement between them, by the Central Board of Revenue [section 64 (3)].

The assessee is in each case given an opportunity to state his views, but these are not necessarily accepted.

Under the old Act, no definite time limit was laid down within which an Income-tax Officer's jurisdiction could be challenged, and cases arose where such a claim was deferred until such time as an Income-tax Officer was no longer competent to re-open proceedings—resulting in an assessee escaping taxation altogether where the claim was successful, and the original assessment was set aside as being *ultra vires*.

This lacuna has now been filled in by a new proviso to section 64 (*3*) which lays down that jurisdiction can only be questioned by an assessee within the period allowed him for the submission of a return of income, including a return called for in connection with escaped or under-assessed income. (The return of income here referred to is that for which a special and not a general notice in the press or otherwise has been issued). If, however, he has responded to the general notice and has stated in his return the location of his principal place of business, profession or vocation, jurisdiction can be no further challenged.

Section 64 (4) lays down that, despite the foregoing, every Income-tax Officer has full powers in respect of assessing income relative to his own area. This may appear confusing at first, but is simply explained.

Assume that a business has several branches. The return of income for the business as a whole will be sent to the Income-tax Officer having jurisdiction over the principal centre. Instead of calling for the production of all the books at his office, he may ask the Income-tax Officer having jurisdiction over any branch to examine the books of that particular branch and submit a report. In such a case, notices calling for books and other evidence will be issued by the branch Income-tax Officer and must be complied with. On completion of the examination, his report is then sent for incorporation in the main assessment.

Similarly in the case of professional men. A doctor, for example, may be assessed on his salary in one district but carry on his profession in various other jurisdictions. The professional income earned in each particular jurisdiction will be calculated and finally combined with the salary income.

There is thus existent a type of dual jurisdiction, but a final assessment can only be made at the principal place of business or in the area where the assessee resides. It should be noted, however, that the Income-tax Officer making the final assessment is not bound to accept reports submitted by his brother officers and is empowered to issue fresh notices calling for books or other evidence at his office. Failure to comply will result in an *ex parte* assessment.

Salaries. For administrative convenience, Government servants and others who are likely to frequent transfer are assessed by special officers. For example, all Government servants in Bengal come under the jurisdiction of the Income-tax Officer, Central Salaries, Calcutta. Further particulars will be found in the Income-tax Manual.

PREVIOUS YEAR

Meaning of "previous year". The first point for the man in the street to get firmly fixed in his head is that the income that is being taxed is the income of the previous year.

In the United Kingdom the income that is taxed is the income of the current year but this is estimated by reference to the income of the previous year. That makes it necessary in the United Kingdom to have elaborate rules regarding the assessment of new businesses which have no previous year and corresponding rules for discontinued businesses for which the results of the previous year can be no guide.

In India these troubles are avoided by taxing in any year the income of the previous year. Only after the income has been earned or received can it be taxed. There is no doubt that this system is simpler and better.

It causes confusion to many people, however, who suffer tax by deduction. Interest on securities and salaries have the tax deducted at source (section 18). Amounts so deducted and also any amount of tax paid by a company on a gross dividend and deducted therefrom paying to the shareholder his net dividend, are treated as payments of tax in advance and credit is given in the following year's assessment [section 18 (5)]. See note on "*Dividends*".

Thus, in the return for the year 1939/40, the salary drawn in 1938/39 is shown, and the amount deducted at source on the salary of 1938/39 is deducted from the total tax found payable on salary and other income if any in the 1939/40 assessment.

The *assessment* year is always the financial year ending 31st March.

Let us assume that it is the year beginning on 1/4/39 and ending on 31/3/40.

The *previous* year will then normally be one of the following :—

(*a*) the financial year ending 31/3/39

(*b*) the calendar year ending 31/12/38

(*c*) any other year ending before 1/4/39.

It will be noted that in all these cases the "previous year" ends before the commencement of the assessment year.

Special cases. A "year" as the average man understands it, consists of twelve months. There are, however, certain communities whose commercial year varies in length, and, expressed in terms of the English calendar, is sometimes less and sometimes more than the orthodox 12 calendar months. In such cases, if termination before the assessment year was insisted upon, it is evident that such a commercial period ending, say, early in April of the assessment year could not be recognised. For example, where the assessment year is 1939/40 and the commercial period of, say, 13 months ends on 14/4/39, the income to be assessed in 1939/40 would be that of the period ending 14/4/38. Moreover even this date of closing is likely to vary.

To meet these extreme cases, the Central Board of Revenue has by section 2 (ii) (b) been given discretionary powers in the matter of recognising special previous years and Commissioners of Income-tax have been, in turn, authorised to recognise as within the meaning of "previous year" :—

(a) a commercial year consisting of not less than 11 months, or not more than 13.

(b) a commercial year ending after the commencement of the assessment year but not terminating later than the 30th April in that year.

Reverting to the above example, it will be seen that a year of, say, 13 months ending on 30/4/39 is made assessable in 1939/40, while one ending on 5/5/39 is assessable in 1940/41.

With this instruction to Commissioners, the powers of the Board in the matter have not been exhausted and other special cases may be referred to them by the Commissioners of Income-tax for sanction.

New Businesses. These have been specially catered for by a new provision—section 2(11)C. The interpretation of the sub-section is considerably confusing to the layman, but is simply explained by an example.

Suppose a business has been newly started on 15/8/38. The assessments for 1939/40 and 1940/41 will be as follows :—

Ordinarily

	1939/40	1940/41
(*a*)	15/8/39—31/3/39	1/4/39—31/3/40

(*b*) *In the special case referred to above*

1939/40	1940/41
15/8/38—30/4/39	1/5/39—30/4/40

or any other closing date that may have been determined by the Board. No option is given to the assessee in such cases.

(*c*) *In cases where a commercial period of 12 months is the rule.* The assessee is in this case given the option of selecting a date for closing his books and that date must be regularly followed in subsequent years. Suppose two businesses are started on the same date (say, 15/8/39), and business A decides to close its books by the calendar year and business B by the year ending 30th June. The assessments will be as follows:—

	1939/40	1940/41	1941/42
A.	15/8/38—31/12/38	1/1/39—31/12/39	1/1/40—31/12/40
B.	No assessment	15/8/38—30/6/39	1/7/39—30/6/40

This merely gives statutory effect to what was the general practice in such cases.

Change of accounting period. The assessee is given the option, except in the special cases already referred to, of choosing his own accounting year. Once, however, this option has been exercised in an assessment, a change cannot be made without the Income-tax Officer's sanction, and then only subject to any conditions he may think fit. Where the change-over is permitted, the assessee has to be prepared to pay tax due on an interim period which may be considerably more than 12 months and which is based on the period from the end of his last "previous year" to the end of the one newly agreed on.

For example, if in 1939/40 an assessee changes over from the year ending 30th June to the financial year, his assessment for 1938/39 will have been on 1/7/36—30/6/37, and for 1939/40 will be on 1/7/37—31/3/39, *i.e.*, 21 months.

If he changes from the financial to the calendar year, his 1938/39 assessment will have been on 1/4/37—31/3/38 and for 1939/40 will be on 1/4/38—31/12/38, *i.e.*, 9 months.

In each case the rate and amount of tax will be that appropriate to the full period of 21 months or 9 months, as the case may be.

Separate sources of income, profits and gains. The change of wording in section 2 (11), opening paragraph, should be noted. The assessee is now allowed to exercise an option in respect of each source of income. Thus, his previous year for salary and interest on securities may be that ending 31st March. In addition, if he has partnership income, one business may adopt the calendar year and another the year ending 30th June and so on. Separate computations based on

each particular previous year will first be made by the Income-tax Officer and then combined for assessment as one complete whole.

Partners of Firms. As a corollary to the foregoing, the "previous year" of a partner is that followed by the business in which he is a partner. If he is a partner in six businesses, each having a separate accounting year, six different "previous years" are to be worked on in calculating his share of the partnership income. The word "share" here is important in view of the definition given in section 16 (*1*) (*b*). If a partner in a firm receives a salary of Rs. 6,000/- from an outside source and Rs. 2,000/- from the firm which follows the accounting year, the first salary will presumably be taxed on the financial year basis and the second on the calendar.

PROFESSION AND VOCATION.

These have now been included under section 10 which covers "profits and gains of business, profession or vocation". Thus a rather redundant chapter in the old Act, with its special provisions for depreciation etc., and which gave rise to much discontent, has now disappeared.

In view also of the change in section 4 (see "*Residence*"), the special provision in section 11 (3) of the old Act making taxable professional fees paid in any part of India to a person ordinarily resident in British India, has now become unnecessary.

Profession or Vocation are nowhere defined in the Act. The shade of difference between them is at the best very fine and at times defies differentiation. The following extracts from English decisions will, however, throw some light on the matter :—

"*Profession.*—A profession, in the present use of language, involves the idea of an occupation requiring purely intellectual skill or manual skill, controlled, as in painting and sculpture or surgery, by the intellectual skill of the operator, as distinguished from an occupation which is substantially the production or sale or arrangements for the production or sale of commodities. . . . . It appears to me clear that a journalist whose contributions have any literary form, as distinguished from a reporter, exercises a 'profession'; and that the editor of a periodical comes in the same category. It seems to me equally clear that the proprietor of a newspaper or periodical, controlling the printing, publishing and advertising but not responsible for the selection of the literary or artistic contents, does not exercise a 'profession' but a trade or business. . . . . ."

"*Vocation.*—I do not think 'employment' necessarily means a case in which a person is set to work by other men to earn money. A man may employ himself in order to earn money in such a way as to come within that definition, but I think the word 'vocation' is a still stronger word. It is admitted to be analogous to the word 'calling' which is a very large word; it means the way in which a man passes his life and it is a very large word indeed. . . . In my opinion, if a man were to make a systematic business of receiving stolen goods . . . . . the Income-tax Commissioners would be quite right in assessing him. . . . There is no limit as to its being a lawful vocation."

" 'Vocation' and 'calling' are synonymous terms, and if anybody were asked what was the calling or vocation of these gentlemen, the answer would be 'professional book-makers'."

See also under "*Business*", *supra*.

PROVIDENT FUNDS.

There has been no great change in the law here, but a certain tightening up to prevent avoidance.

There are three classes of provident funds.

(*a*) *The recognised provident fund* (see Chapter IX-A). With this may be associated the Fund under the Act of 1925.

See separate note, *post*, p. 166.

(*b*) *Unrecognised fund with trustees.*—Under the old Act, the employer could charge as an expense any payments to the trustees. He can still do that but only if he has made effective arrangements to secure that tax shall be deducted at source from any payments from the fund which are taxable under the head salaries [section 10 (4) (*c*)].

What exactly this means is not clear. Under section 18, trustees are liable to deduct or be themselves treated as assessees. Under the trust deed, they would probably have to pay out of their own pockets any sums for which they themselves became liable, so it is difficult to see what more the employer can do. Probably this particular provision will remain a dead letter.

The employee pays tax on his full salary. When he draws his money from the provident fund he pays tax on what he receives except on his own contribution and interest thereon. (Section 7, *Explanation* 2).

(*c*) *Unrecognised fund without trustees.* Here the employer is in charge of the funds. His contribution to the fund is not allowed as an expense but any payments actually made to retiring employees are so allowed.

The employee's position is as in the case of a fund with trustees.

The money received by an employee is in the nature of salary (section 7, *Explanation* 2) and the employer must deduct tax on the taxable part, *i.e.*, his own contribution and the interest thereon (section 18).

Under the old Act, monies from unrecognised provident funds were not taxable until actually received.

In the new Act, Explanation 2 of section 7 says "a payment due to or received by an assessee" is a profit received in lieu of salary.

A footnote to the Enquiry Committee report in connection with salaries says "The word 'due' is intended to refer to the date on which remuneration becomes payable, and has no reference to the period for which it is earned."

If the Courts adopt that meaning, it follows that the position has not been changed very much but the drawing of the money in instalments in order to decrease the rate will no longer be possible.

PROVIDENT FUNDS AND THE EMPLOYER

1. *Recognised Provident Funds.* The conditions for recognition are set forth in section 58-C and the employer's annual payments to the trustees are treated as a business expense.

The employer's contribution cannot exceed that of an employee except as provided by sec. 58-D.

When the employer has a fund transferred to trustees, the employer's contribution transferred shall be treated as capital expenditure but shall be treated as an expense of the business when paid out (section 58K).

2. *Unrecognised Funds with trustees.* The employer's contribution is treated as an expense in the year of payment to the trustees but the conditions of the trust must be such as to prevent the employer resuming control of the money.

3. *Unrecognised Funds without trustees.* The payments to the fund are not allowed as an expense but the actual payments from the fund can be so allowed.

Section 10 (4) (*c*) should be seen. Payments to Provident Funds with trustees cannot be allowed as an expense unless the employer has arranged that tax will be deducted at source from any payments made.

Such payments to assessees are now by Explanation 2 of section 7 made salary payments and so trustees can and must deduct. When the trustees are out of British India, the conditions of the fund will need to be altered.

PROVIDENT FUNDS—RECOGNIZED

Recognized Provident Funds. It is not very easy to condense Chapter IXA of the Act. In the past, the main objection to these funds arose from the fact that owing to the increase in the fund standing to the credit of an employee being included in the total income for the purposes of determining his rate, an employee might find himself faced at the end of the year with a considerable extra demand on account of credits which he could not draw until he retired or left and might under certain circumstances never draw at all.

Under the slab system, which might more appropriately be called the slope system, every extra rupee of total income adds to the average rate and so everyone's tax is increased by virtue of the accretions to the provident fund but at any rate sudden changes are avoided. As far as the employee goes the following are the important points.

There is included in his total income for deciding the average rate of tax—

1. His own contribution. That is really included in his salary. It is of course not included twice over.
2. The employer's contribution.
3. All interest credited.

There is excluded from the taxable total—

(*a*) Contributions up to a limit of one-sixth of salary with 6,000/- maximum.

(*b*) Interest credited up to 6% with a limit of one-third of the year's salary.

Example. Salary Rs. 6,000 per annum. Contribution Rs. 600 from employer and Rs. 600 from employee. Interest at 8%, Rs. 400. The total income is Rs. 6,000 plus Rs. 600 plus Rs. 400, or Rs. 7,000. The taxable income is—

	Rs.
Total income	7,000
Less contribution (limited to one-sixth of salary) ...	1,000
Less interest (limited to 6%)	300
	5,700

All the total income attracts super-tax.

On receiving the provident fund, the following is the position.—

Income-tax. No income-tax is payable on money received nor does the amount go into income so as to affect the rate of tax on the assessee's other income. The assessee, however, must have had five years' continuous employment. If he has not served so long, the Commissioner can allow exemption and will do so if the employee leaves through illness, business closing down or for no fault of his own.

If in the case of a short term employee this concession is not allowed, the Income-tax Officer works out the accretions year by year and calculates how much extra tax would have been payable if the exemptions marked (*a*) and (*b*) above had not been allowed.

The amount received on leaving does not, of course, affect the total income of the year of leaving so as to raise the rate on the other income.

Example. Suppose an employee serves for 2 years at Rs. 6,000 under this new Act and leaves at the beginning of the third year—

His own contribution is Rs. 600 per annum. The employer's is the same. Interest is Rs. 60 in the first year and Rs. 123 in the second year on a 5% basis.

In the first year the total income was Rs. 6,660 and the taxable income Rs. 5,600.

In the second year the total income was Rs. 6,723 and the taxable income Rs. 5,600.

The rate applicable to Rs. 6,660 is 8·47 pie
,, ,, ,, ,, Rs. 6,723 ,, 8·53 ,,

The assessee paid tax on Rs. 5,600 at these two rates for the first and second years respectively. He has now to pay on the difference which is

1st year Rs. 1,060 at 8·47 pie, or Rs. 46-12
2nd year Rs. 1,123 at 8·53 pie, or Rs. 49-14

Super-tax. Payments from the fund are also exempt from super-tax since 1933 and so only the accretions prior to 1st April 1933, are taxable.

In the case of short term employees who have not had five years' service and who are not exempted by the Commissioner, the super-tax for each year is worked out as if the fund had not been recognised.

QUESTIONS OF FACT AND QUESTIONS OF LAW.

This is a matter of general importance since references to the High Court can only be made on questions of law. When the Tribunal is established it will hear appeals on fact or law but the Courts can only go into law.

It is not uncommon to find a Commissioner refusing to make a reference to the High Court on the ground that no question of law is involved. Very often an application to the High Court results in the Commissioner being compelled to state a case. That is because he has differed from the Courts as to what is law and what is fact. It is very difficult to distinguish between the two in many cases but the following general indications will be of some value to assessees.

The proper inferences to be drawn from facts may involve legal considerations.

Conclusions from facts are very different to findings on fact.

Findings of the Department based on a misapprehension cannot be looked on as distinct findings of fact.

Whether a building is occupied as a school is a question of fact but whether the school is a charity school is a question of law.

Whether or not dividends were paid out of profits is a mixed question of law and fact.

Whether a payment is a pension or an annuity is a mixed question of law and fact.

Questions of degree are eminently questions of fact.

The method on which the accounts of a company are to be kept is one of principle and therefore of law.

Whether there is sufficient evidence to support a finding of fact or not is a question of law.

This last principle is perhaps the most useful of all to assessees and in making their first appeal to the Appellate Assistant Commissioner, assessees must always consider carefully whether they have sufficient grounds to take this point.

On a close analysis of cases, it will be found that the majority have reached the Courts simply because of this one principle.

Rates of Indian Tax in Recent Years.

Rs.	1922-23 1929-30	1930-31	1931-32	1932-33	1933-34 1934-35	1935-36	1936-37 onwards
1,000-1,500	*Nil*	*Nil*	*Nil*	4	2	1⅓ pies	*Nil*
1,500-1,999	2 pies	*Nil*	*Nil*	4	4	2⅔ pies	*Nil*
2,000-4,999	5 ,,	5	6	6+¾	6+1½	6+1	6+½
5,000-9,999	6 ,,	6	9	9+1	9+2¼	9+1½	9+¾
10,000-14,999	9 ,,	9	12	12+1½	12+3	12+2	12+1
15,000-19,999	10 ,,	10	16	16+2	16+4	16+2⅔	16+1⅓
20,000-29,999	12 ,,	13	19	19+2⅜	19+4¾	19+3⅙	19+1 7/12
30,000-39,999	15 ,,	16	23	23+2⅞	23+5¾	23+3⅚	23+1 11/12
40,000 and over	18 ,,	19	25	25+3⅛	25+6¼	25+4⅙	25+2 1/12
Companies	18 ,,	19	26	26+3¼	26+6½	26+4⅓	26+2⅙

Rates of U. K. Tax

	20-21	21-22	22-23	23-24	24-25	25-26	26-27	27-28
Standard rates ..	6/-	6/-	5/-	4/6	4/6	4/-	4/-	4/-
Earned income relief	10%	10%	10%	10%	10%	16%	16%	16%
Maximum limit of earned income.	£200	£200	£200	£200	£200	£250	£250	£250
Bachelor's relief ..	£135	£135	£135	£135	£135	£135	£135	£135
Married man's relief	£225	£225	£225	£225	£225	£225	£225	£225
Reduced rate relief—								
(*a*) Quantity ..	£225	£225	£225	£225	£225	£225	£225	£225
(*b*) Rate charged	3/-	3/-	2/6	2/3	2/3	2/-	2/-	2/-
Children's allowance, 1st child.	£36	£36	£36	£36	£36	£36	£36	£36
Other children ..	£27	£27	£27	£27	£27	£27	£27	£27
House-keeper's allowance.	£45	£45	£45	£45	£60	£60	£60	£60
Dependent relative allowance.	£25	£25	£25	£25	£25	£25	£25	£25

in Recent Years.

28-29	29-30	30-31	31-32	32-33	33-34	34-35	35-36	36-37	37-38	38-39
4/-	4/-	4/6	5/-	5/-	5/-	4/6	4/6	4/9	5/-	5/6
16%	16%	16%	20%	20%	20%	20%	20%	20%	20%	20%
£250	£250	£250	£300	£300	£300	£300	£300	£300	£300	£300
£135	£135	£135	£100	£100	£100	£100	£100	£100	£100	£100
£225	£225	£225	£150	£150	£150	£150	£170	£180	£180	£180
£225	£225	£250	£175	£175	£175	£175	£135	£135	£135	£135
2/-	2/-	2/6	2/6	2/6	2/6	2/6	1/6	1/7	1/8	1/8
£60	£60	£60	£50	£50	£50	£50	£50	£60	£60	£60
£50	£50	£50	£40	£40	£40	£40	£50	£60	£60	£60
£60	£60	£60	£50	£50	£50	£50	£50	£50	£50	£50
£25	£25	£25	£25	£25	£25	£25	£25	£25	£25	£25

N.B. The figures for 1939/40 are the same as for 1938/39.

REFUNDS OF EXCESS TAX PAID OR DEDUCTED (SECS. 48 & 50).

The provisions in this respect have been very much simplified and now cover all cases where tax has been deducted at source or otherwise paid in excess of what is actually payable by an assessee.

Where, such as in the case of husband and wife, the latter's income has been included in the husband's assessment, the party actually assessed (in this example the husband) is the only one competent to claim the refund.

Where an assessee dies, or through incapacity, bankruptcy, liquidation or any other cause, is unable to claim a refund to which he would have been legitimately due, the claim may be made and the refund received by his executor, administrator, trustee or receiver, or other legal representative (section 49F).

A refund may be either paid in cash, or set off in whole or in part against any other demand due from an assessee at the time (section 49E), at the option of the Income-tax Officer.

Refunds on income doubly assessed are treated in a separate note. (See *Double Income-tax Relief*).

The calculation of refunds on dividends has now been made more complicated and is fully discussed under *Dividends*.

Time limit (section 50). This has now been extended to four years (for assessments under the new Act) and is to be calculated from the end of the financial year in which the income relative to the refund was first assessable. (See *Previous Year*).

This provision is not, however, with retrospective effect and the old time limit of one year continues to apply in cases where the tax which forms the subject of refund was paid at any time prior to the 1st April, 1939.

Appeals are permissible against an order of an Income-tax Officer refusing to grant a refund, or against the amount of refund allowed. (See *Appeals*).

The old provision debarring alien non-residents from claiming a refund has now been deleted due to the special provisions made for recovery of tax at source and calculation of rates of tax from such persons. This change, however, is not retrospective. The following explanation given by

Mr. Chambers in the Assembly (*Debates*, page 4076) sets the position out clearly: —

"That is to say, no person who is a foreigner, in all senses of the word could claim a refund. In the Bill we have made provision for the deduction at source of tax which was formerly not deductible at the source. We have also provided for the deduction of super-tax in certain cases. It may happen that in some cases that tax has been deducted in excess of the true liability of that person, in particular you may get tax deducted by an agent on behalf of a non-resident, and it may prove, ulcimately, that the liability from a business or from some other source is less than tax which has been deducted at source, and for that reason we must have some power to refund to those persons who have suffered at source excessively. There is no question of the section granting any refund which is not otherwise grantable under the Act, that is to say, a non-resident chargeable to income-tax at the maximum rate and also to super-tax, will not get any reduction in that, there is no question of reducing that at all, but we must have some provision for refunding to him in any case in which the tax deducted at source is in excess of his true liabilty."

REOPENING OF ASSESSMENTS (SEC. 34)

Income escaping assessment. Under the old Act, the Income-tax Officer could reopen "if for any reason income, profits or gains has escaped assessment". These words gave rise to many cases into which it is unnecessary to go but the last case ruled that the Income-tax officer could not reopen on suspicion.

Under the new Act, the Income-tax Officer can reopen "if in consequence of definite information which has come into his possession the Income-tax Officer discovers" that income has escaped assessment. His time limit is 4 years but if the Income-tax Officer has reason to believe that the assessee has concealed part of his income or has deliberately furnished inaccurate particulars thereof, the time limit is extended to 8 years.

It has been held under similar wording in the United Kingdom that if an Income-tax Officer decided at first not to tax certain income he could reopen the case if he decided later that he should have done so. That particular decision is going to give the Revenue a very big advantage. Court cases often upset preconceived and long-held ideas. When the upset is in favour of the Revenue they will be able to go back for 4 years. When it is in favour of the assessee he can only appeal on the current assessment and only then if in time, *i.e.*, within 30 days.

It is to be doubted whether the new wording of this section will be less the subject of litigation than the old.

"If in consequence of definite information." Is the Income-tax Officer to give his definite information when he issues the notice calling for a fresh return? If he refuses to give it, is the notice bad? Does the definite information extend to giving figures? Can he say to an assessee, "I know that you did not return income from shares" or must he say "I know that you did not return income from such and such shares" or must he say "I know that your income from such and such shares was so many rupees"? Are anonymous letters sources of definite information? If an Income-tax Officer finds an assessee returning income from a certain source which he has not previously disclosed, can he call this definite information and reopen the assessment of previous years on suspicion or must he get a definite statement from the assessee on the point?

Further, the extension of the time limit to 8 years depends upon the Income-tax Officer having "reason to believe". How

does that go with the need for definite information which is essential before any action can be taken at all.

There is no appeal possible against the reopening. Assessees can make the usual reference to the Commissioner but that is likely to prove infructuous.

If the assessee makes the return, the Income-tax Officer is likely to be in possession of definite information and dates become important. Supposing as a result of a notice under section 34 issued without definite information and so admittedly bad the Income-tax Officer gets possession of definite information, can he reopen the case in the following year?

Further, if an assessee has been assessed on several sources of income, and the Income-tax Officer issues a notice giving definite information regarding only one of them, is he precluded from revising the other items also? Presumably yes, but the Department are sure to try to prove the contrary.

These are all very technical points and indeed the interpretation of the old section has always been a matter of technicalities. The subject is emphatically more one for the lawyer than for the ordinary assessee for whom this book is intended. One can only advise great caution. Make no return against a notice under this section without getting proper advice and first get a copy of the relevant entries in the order sheet which led to the issue of the notice, and insist upon knowing what the "definite information" is.

Time limit of assessment. There is now a definite time limit for an order of assessment. It must positively be completed within 4 years, or in the case of concealment, within 8 years. That applies to all assessments and not only to assessments under section 34.

Thus, an assessment for 1939-40 can be re-opened up to 31-3-44 but it must definitely be completed by 31-3-44 also and as the assessee must have time to make a return and appear etc. that, in fact, cuts down the time for re-opening.

This 4 year, or 8 year, limit applies to assessments for 1939-40 and later years. The assessments for 1938-39 can only be re-opened up to 31-3-40.

This is one of the sections which, it would seem, must come into force from 1-4-39 in regard to all pending assessments. (See also *Assembly promises*).

RESIDENCE AND CLASSES OF ASSESSEES

The new Act has made radical changes in this respect and for certain classes of people foreign income is taxable. This has necessitated a definition of residence. Under the old Act, there was seldom any need for such a definition. In the case of claiming refunds on tax deducted from interest or dividends non-residents were on a different footing to residents but otherwise the point was of little importance. All that has been changed and the meaning of residence has now become of prime importance.

The relevant sections are 4-*A* and 4-*B* which first define residence and then say who is "not ordinarily resident". This is necessary but extremely confusing. It can be considered more simply thus:—

1. An assessee is in British India for 182 days or more in that year.

2. An assessee maintains or has maintained for him a dwelling place in British India for a period or periods amounting in all to 182 days or more in that year and is in British India for any time in that year.

3. An assessee has in the four preceding years been in British India for a period or for periods amounting in all to 365 days or more and is in British India for any time in that year otherwise than on an occasional or casual visit.

A. An assessee has been "resident" in British India in nine out of the ten preceding years.

B. An assessee has during the seven years preceding been in British India for a period or for periods amounting in all to more than two years.

If an assessee complies with one or more of the first three conditions and both of the last two conditions he is a full resident.

If he complies with any of the first three conditions but complies with neither of the last two or only one of them he is called " not ordinarily resident". He is a semi-resident.

If he does not comply with any of the first three he is a non-resident.

It is most important that this classification should be grasped clearly.

The above applies, of course, to individuals. A Hindu undivided family, firm or other association of persons is resident in British India unless the control *and* management is situated wholly without British India.

A Hindu undivided family is ordinarily resident in any year if its manager is ordinarily resident in British India.

The importance of the status of a *Karta* of a Hindu undivided family is thus clear.

A company is resident in British India if the control and management is situated wholly in British India *or* if its income arising in British India exceeds its income arising without British India. There is no such thing as being "not ordinarily resident" for a firm, Hindu undivided family, association of persons or a Company.

It is clear that these sections must give rise to as much difficulty as has the question of residence in the United Kingdom and some of the distinctions drawn are not easy to understand. Consider the case of a firm or a company, both having the greater part of their income from foreign sources. The company will be non-resident unless all its control and management is in British India and the firm will be non-resident only if all its control and management is outside British India. This is a distinction which may make a very great difference in the tax payable by two equally prosperous concerns.

It is not possible here to deal with all the knotty points that these definitions will cause. The United Kingdom law is different but there are many decided cases to refer to on points which are similar in the two laws but assessees should look ahead and protect themselves as far as is possible.

Points for consideration. The following points should be kept in mind.

1. In the case of companies, the place where the managing director is and where directors' meetings are held is of importance.

2. A Hindu family must consider where its *Karta* is to live if it has income in Indian States.

3. Those firms which have headquarters in Indian States must consider the advisability of separating the organisation in British India entirely from the headquarters organisation.

4. For individuals who have come to India in the last two or three years, the dates of arrival and departure are of importance and should be put on record with suitable proof before memory becomes dull.

5. The same applies to those who have been coming and going for 9 or 10 years but who have been here for the last two years.

6. Visitors must be careful about the 182 days limit. Whether this includes the days of arrival and departure is not known yet. See under "Visitors"

7. Dividends paid outside British India are to be included in foreign income for judging the residence of a company even though they are earned and taxable in British India.

RETURNS

I

Total Income and Total World Income. An important departure from the normal procedure is the introduction of the United Kingdom system of compulsory returns of income and as penalties for non-submission have been simultaneously provided for, the change over should be very carefully studied.

Prior to 1939, the onus of discovering new assessees and of originating their annual assessments by the issue of a notice calling for a return of income, devolved on the Income-tax Officer. Assessees who, however large their income may have been, did not receive such a notice within two years from the end of the year in which their income accrued or was received, escaped taxation altogether.

Section 22 (*1*), as amended, seeks to rope in these defaulters and provides for the issue of a general notice in the press and on the notice boards of public offices or otherwise, calling on all those with an assessable income to submit their returns in the prescribed form, obtainable on demand, within 60 days.

The issue of notices by the Income-tax Officer to assessees by name is now made optional but will be continued in the case of assessees already known to the Department, allowing the usual period of *30 days* for compliance [section 22 (*2*)].

In each of these cases an extension of the period for submission of the return may be granted by the Income-tax Officer at his discretion, on application.

Non-receipt of the special notice will not, however, be considered sufficient cause for non-submission of a return in response to the general notice and, except in very special cases (for example, if an illiterate person has not seen or heard of the general notice), such failure may be visited with a penalty up to 1½ times the tax ultimately levied (see *"Penalties", infra*).

Section 22 (*3*) permits of the filing of a return, or of a fresh return correcting any omission or misstatement in a previous one, up to the date of assessment. The latter portion of this concession, however, does not operate to exempt an assessee from the penalty appropriate to a deliberate misstatement or omission in the return sought to be amended.

The form of return has been completely remodelled and now consists of six parts with further space provided for the returns mentioned in Para. II-B below and with copious notes added for the guidance of assessees—11 pages in all.

Part I of the return is in three sections A, B and C. *Section A* is based on page 1 of the old form and provides for income arising, earned or paid in British India and also, in the case of residents and semi-residents for income, profits and gains of a business controlled in, or a profession or vocation set up in British India.

Section B applies to foreign income excluding that shown in section A, brought into British India during the year for which tax is being levied. (This section does not apply to non-residents.)

Section C is for foreign income not brought into British India during the previous year and exempt to the extent of Rs. 4,500 in the case of residents. The income of non-residents is shown here for rate purposes only.

Part II is in respect of income which is included in "Total income" for the purpose of ascertaining the rate of tax but is allowable as a deduction in calculating the tax finally payable.

Part III, together with pages 10 and 11 form the non-penal returns mentioned in para. II-B (i-v) below.

Part IV applies to business, profession and vocation only and is an attempt to adjust the figures of profit and loss account to the Income-tax computation. It should be noted that a separate form is to be filled in for each separate and distinct business, profession and vocation.

Part V guards against loss of the depreciation allowance by inadvertence in filing the separate form hitherto provided, by incorporating the depreciation claim in the return of total income.

Part VI is a repetition of the old Schedule A (details of income from house property) with columns for claiming the various allowances under this head.

The notes for the guidance of assessees on pages 7-9 draw attention to the more important changes affected by the New Act.

An important feature, and one worthy of special notice in view of the penalty attached to the making of a false verification, is the verification form on page 6 of the return of income which is now inclusive, and covers entries made in the Depreciation claim, details of house property and in the

return required from business assessees. [See para. II-B (v) below.]

II

In addition to the foregoing, the following returns are also provided for in the Act. Those in para. A are compulsory and are to be made annually on or before the dates mentioned against each. Those in para. B are to be called for by the assessing or appellate authority.

A. Compulsory. (i) *Dividends to shareholders.* Names and addresses of shareholders (as entered in the Share Register) who received dividends aggregating over Rs. 5,000 in the preceding year. To be submitted by the company on or before 15th June in each year (section 19A).

(ii) *Interest.* Names and addresses of persons to whom interest, other than interest on securities, exceeding Rs. 399 has been paid during the previous financial year.

To be submitted (by those paying such interest) on or before the 15th June in each year (section 20).

(iii) *Salaries.* Names and addresses of employees and others who during the previous year received or had due a "salary" of Rs. 2,000 or over, together with details of amounts paid to or due to them and of income-tax and super-tax deducted and the dates of payment or accrual of salary and deduction of tax (section 21).

To be submitted by the employers by the 30th April.

Note (1).—The word "salary" is used here in its broad sense (see under *"Salaries"* and *"Deductions at Source"*). From April, 1939, such "salaries" are taxable if they are due and whether or not they were actually paid in the previous financial year. Advances against salary are to be treated as payments of salary on the day on which such advances are taken.

Note (2).—Emoluments paid by an employer to an employee or any sums paid by him as contributions to an employee's credit in a recognised superannuation fund are to be included in this return.

B. Non-Penal. (Section 38).

(i) *Hindu Undivided Family.* Names and addresses of the manager and adult male members of a Hindu undivided family.

(ii) *Firms.* Names and addresses and other particulars of the members of a firm.

(iii) *Trustees, Guardians and Agents.* Names and addresses of persons represented by a trustee, guardian or agent.

(iv) *Interest and other payments.* Names and addresses of parties to whom an assessee has paid *in any year* rent, interest, commission, royalties, brokerage or any annuity other than an annuity included in salaries (see under "*Salaries*"), exceeding Rs. 400 in each case and details of the payments made.

(v) *Business, Profession or Vocation.* Section 22 (5).

(*a*) Name and location of the assessee's principal place of business and of each branch.

(*b*) The names and addresses of his partners, if any.

(*c*) The extent of his share and that of his partners.

This return is to be submitted by those engaged in business, profession or vocation. What penalty, however, attaches to non-submission of such particulars is not clear from the Act. Probably that appropriate to an incomplete return (*ex parte* assessment).

All five returns have been embodied in the return of income, and as such, a notice calling for such a return has also to be construed as calling for these five also. No pecuniary penalty has been provided for failure to fill up these returns, but presumably such an omission would make the whole return invalid and also, in the case of return (v) above, render the assessee liable to prosecution for making a false statement in a verification (see "*Penalties-B*", *infra*), as the verification form in the return of income now includes entries made in this return also.

C. Share, Debenture and Mortgage Registers. Section 31 of the Act empowers the Income-tax Officer or Assistant Commissioner, or any person deputed by either in writing, to examine and take copies (without payment of any fee) of entries in such registers. Executive instructions have, however, been issued to the effect that such information should *not* be called for from the company by way of a return giving names, addresses and other relative details for a particular period.

D. Special Returns—*Securities.*

(*i*) This provision is new and entitles the Income-tax Officer to call for a return from any person giving details of securities of which such person was the owner during the period specified in the notice. The object is to enable the Income-tax Officer to ascertain whether through any transaction or dealing in the securities referred to, tax has been evaded in whole or in part. A minimum of 28 days must be given for compliance with the notice (see sections 44E and 44F).

(*ii*) *Superannuation Funds* (approved)—(section 58 V).

This return is to be furnished only when called for by the Income-tax Officer and is to be submitted by trustees and employers who contribute to such funds. The minimum period given for compliance with such a notice is 21 days and the particulars to be given are as below:—

(*a*) Such particulars of contributions made to the fund as the Income-tax Officer may require; or,

(*b*) (*1*) the name and address of any person in receipt of an annuity and the amount of such annuity from the fund;

(*2*) particulars of any contribution (including interest on contributions, if any), returned to the employer or employees;

(*3*) particulars of sums paid in commutation or in lieu of annuities; or,

(*c*) A copy of the fund accounts as at the date of closing prior to the receipt of the notice, together with any other details required by the Central Board of Revenue.

RETURN FORM—FILLING UP THE

There is evidently still much confusion about what was intended and what was achieved by altering section 4. The official interpretation seems to be that put forward by Mr. Chambers in the Council of State (page 63). He says—

(*1*) Non-residents pay tax only on what arises in British India.

(*2*) Residents not ordinarily resident pay on what arises in British India plus what they bring into British India.

(*3*) Residents, ordinarily resident pay on what arises in British India and on what arises abroad with a deduction of Rs. 4,500 in the case of what is not brought to British India.

On this interpretation, the form of return has been based. Even at that we do not think the form correct but we cannot agree that the official interpretation given above is correct.

In the first place, both non-residents and semi-residents pay on what is received in British India. See section 4 (*1*), (*a*). That is a minor omission and excusable in a debate. Mr. Chambers says, however, that semi-residents pay only on foreign income they bring to British India. This is not correct. All residents, by virtue of section 4 (*1*) (*b*) (*ii*) pay on income which accrues outside British India but by the second proviso residents who are not ordinarily resident are exempt unless the income is derived from a business controlled in, or a profession or vocation set up in India.

Further, Mr. Chambers mentioned the exemption of Rs. 4,500 only in connection with ordinary residents but the proviso does not so restrict it and it is applicable to the foreign income not brought into British India of both kinds of residents.

This interpretation is confirmed by a reference to Mr. Desai's speech in the Assembly (page 4218 of the Reports) where it is clear that the exemption is intended also for the Indian trader living abroad, *i.e.*, the resident, not ordinarily resident.

All income is covered by the following classification :—

I Income arising in British India.

X Foreign income received in British India.

B Foreign income from business controlled in or profession or vocation set up in India (not, note carefully, British India) and brought into British India.

C Ditto not brought into or received in British India.

P Other foreign income, *e.g.*, from property or investments brought into British India.

Q Ditto not brought into or received in British India.

Careful note must be made of the difference between "received" and "brought into". Income can be received only once. It may be moved about indefinitely.

The form of return is an extremely puzzling document but the arrangement does not, in our opinion, give effect to the law as it stands and we set out below the classification as directed by the form and the classification which we think should be made in order to comply with the requirements of the law.

Calling residents R, residents not ordinarily resident SR and non-residents NR, the following may be studied.

	As per the form	*As we believe correct*
Section A		
R	IXBC	IX
SR	IXBC	IX
NR	IX	IX
Section B		
R	P	BP
SR	P	BP
NR	Nil	Nil
Section C		
R	Q	CQ
SR	Nil	C
NR	BCPQ	BCPQ

R and SR pay on sections A, B and on C less Rs. 4,500.

NR pays on A at rate applicable to total of sections A & C. Note also:—

(1) Salaries earned in British India wherever paid are deemed to accrue and arise in British India.

(2) Pensions paid outside India are foreign income.

(3) Salaries paid outside British India for work done outside British India are foreign income.

(4) Dividends paid outside British India from profits subjected to income-tax in India are deemed to accrue and arise in British India.

(5) If the wife is R, remittance from a NR husband from income not taxed in British India is deemed to accrue in British India to the wife.

(6) Foreign income shall not be deemed to be received in or brought into British India by reason only of the fact that it is taken into account in the balance sheet prepared in British India.

(7) *Re* deeming, see also :—

Section 7 (2)—Government salaries.

Section 42—Foreign business connection.

It will be seen that the official form denies any Rs. 4,500 exemption to semi-residents. They are certainly entitled to relief on their taxable foreign income not brought into British India. Nor does it seem possible to argue that the words in the brackets in section A refer only to that part of the income from business etc. which is received in British India because if that was meant the words in brackets would be unnecessary and, in any case, should cover all sorts of foreign income.

SALARIES.

Allowable deductions. Under the old Act, no deductions were allowed from salaries for expenses but a new proviso has been made to the effect that the tax shall not be payable on sums which the assessee has to spend by the conditions of his employment wholly, necessarily and exclusively in the performance of his duties out of his remuneration.

The deductions which will be made, if the United Kingdom precedents are followed are—

(*a*) Travelling expenses wholly incurred in the performance of duty. This will not include the cost of travelling to and from a place of business, but will include the cost of travelling from one place to another.

(*b*) Expenses on stationery and telephone if exclusively required for purposes of business.

(*c*) The cost of providing a room to work in at the assessee's residence.

(*d*) The cost of special clothes.

The cost of personal servants will not be allowed.

Rent-free quarters. The value of rent-free quarters is taxable. Instructions in the Manual limit the value to be put on this perquisite to 10 per cent of the salary. It is the custom of Income-tax Officers to stick to this figure of 10 per cent fairly uniformly, and in big cities the 10 per cent limit protects the assessee but in the mofussil that figure may well be too high. What the Income-tax Officer has to determine is the genuine value of the perquisite. In small municipalities, the municipal assessment is a fair guide and may show that the value is less than 10 per cent of salary. On tea gardens where there is no municipality, that test is not available. Five per cent of the cost of construction together with some rent for the land occupied is a fair rough and ready test. Some evidence of houses actually rented in the locality may be available.

Assessees should consider the fair value of the house they occupy and endeavour to get it put on record.

When a house has been occupied by one employee and comes to be occupied by two or more, many Income-tax Officers charge up to each employee 10 per cent of his salary. That is quite illegal unless the fair annual value is more than 10 per cent

of the combined salaries. That is why it is so desirable to get the fair value of the house put on record.

It is right to mention here that there is a whole series of United Kingdom cases on the subject of "Who is occupier?" It has been held that when an employee occupies a house for the essential performance of his duties, *e.g.*, a gateman at a railway crossing, he is not really the occupier at all. The employer is in occupation. An employee may spend 12 hours a day in his office room but the value of that shelter is not charged up to him. Readers who are argumentatively inclined may care to pursue this line of thought in its bearing on this point but not much hope of any fruitful result can be held out.

Allowances for meeting special expenditure. These come under section 4 (3) (*vi*). "Any special allowance, benefit or perquisite specifically granted to meet expenses wholly and necessarily incurred in the performance of the duties of an office or employment of profit" is exempt from taxation and is not included in the total income for rate purposes. This covers motor car or entertainment allowances.

These allowances take the form of a fixed monthly allowance and the employee is not usually expected to give the employer an account of how he spends them. The wise employer works out a fair average figure.

The Enquiry Report pointed out that these are sometimes disproportionately large and suggested that they should be allowed so far as actually expended for the purpose for which they are given. That would have involved the keeping of accounts by the employees but the suggestion has not been incorporated in the new Act. Assessees therefore should resist the attempt of the Income-tax Officers to demand proof as to what has been spent.

Allowances not convertible into cash. These include passage money paid by an employer, domestic services or tiffins. These are exempt. See para. 35 of the Manual. If, however, the employee is given the cash, he is liable to tax, *e.g.*, if he buys his own steamer ticket himself to go on leave but not, of course, if he gets the money for his train fare to travel on duty. That is covered by section 4 (3) (*vi*).

Leave salaries. These are taxable from now on. The exemption has been withdrawn for all leave pay after 31/3/39.

If leave salary is earned in British India it is deemed to accrue and arise in British India. (Explanation 2 of section 4). Therefore it is not foreign income and so does not come under the Rs. 4,500 exemption for foreign income provided by the third proviso of section 4.

Those assessees who go on leave after a period of service partly in British India and partly out of British India should bear this point in mind. If they get six months' leave after three years' service of which only one year has been spent in British India, two-thirds of the leave salary will be foreign income and only one-third will be British Indian income. Thus in such a case, if the leave pay is Rs. 6,000 and the pay in British India is Rs. 12,000, the tax will be on Rs. 12,000 *plus* Rs. 2,000 and the other Rs. 4,000 of leave pay if not brought into British India will come under the Rs. 4,500 exemption.

Pensions paid outside India (note that it is India here and not British India) are not held to accrue and arise in British India and so will not be taxable in the hands of the non-resident.

The change from receipt to due basis. What this means is made clear by the footnote on page 28 of the Enquiry Report. "The word due is intended to refer to the date on which remuneration becomes payable and has no reference to the period for which it is earned."

This appears to settle the doubts of those who were diffident about the effect of the change on March salaries. They argue thus. If March salary is paid on April 1st, the March, 1938 salary was paid on 1-4-38 and came into the 1938-39 accounting year and the 1939-40 assessment year, whereas the March, 1939 salary was earned in 1938-39 and so that also comes into the 1939-40 assessment year thus involving a tax on 13 months. It would seem rather that it involved a tax on 11 months but the argument is without point. March salary paid normally on 1st April is due on 1st April and taxable as such.

The Act says due or paid which again seems to make possible a taxation on more than 12 months' salary but there were executive assurances in the Assembly to the effect that not more than 12 months' salary will be taxed in any year.

What, however, about the tax dodger whose March, 1938 salary, actually payable in March, 1938, was postponed until April, 1938?

Advances of Salary. These are deemed to be due when received but there is going to be difficulty in reconciling this with the promise that not more than 12 months' salary will be taxed in any one year.

Under section 60 (2) Government has the power to put the matter right but since every change in income now means a change in rate, it is asking too much to expect special orders in every such case.

SALARIES—TAX FREE.

When an employee gets a tax free salary his real pay is not only the salary he draws but the tax as well and he is liable to pay tax on tax. If that is again paid by the employer, the process goes on *ad infinitum.*

The results can be worked out from the following table:

Rate		Gross	Tax	Net	[illegible] to net
A. P.		Rs.	Rs. A.	Rs. A.	
nil		1,500	nil	1,500 0	
0 9		3,500	164 1	3,335 15	64/61
	Total	5,000	164 1	4,835 15	
1 3		5,000	390 10	4,609 6	64/59
	Total	10,000	554 11	9,445 5	
2 0		5,000	625 0	4,375 0	8/7
	Total	15,000	1,179 11	13,820 5	
2 6		balance	...	...	32/27

What then is the gross income equivalent to Rs. 16,000 per annum net?

Rs. 15,000 gross equals Rs. 13,820-5 net.

That leaves Rs. 2,179-11 to gross up. The ratio is $\frac{32}{27}$ and the gross is Rs. 2,179-11 × $\frac{32}{27}$ or Rs. 2,572-2.

A total income of Rs. 17,572 therefore gives Rs. 16,000 net.

What is the gross income of Rs. 4,800 net?

Rs. 1,500 is the gross of Rs. 1,500. That leaves Rs. 3,300 to gross up. The ratio is $\frac{64}{61}$ so the gross of Rs. 3,300 is Rs. 3,462. Therefore, the gross of Rs. 4,800 is Rs. 4,962.

When a man gets a free of tax salary, and free house, the position seems insoluble except by trial and error.

Take Rs. 1,000 per month free of tax salary with a free house. Rs. 12,919 gross is equivalent to Rs. 12,000 net. Taking the free house as worth Rs. 1,292, that raises the total to Rs. 14,211 on which the tax is Rs. 1,081. Deducting Rs. 1,081 from Rs. 14,211 leaves Rs. 13,130 which is about right.

Employers should take Rs. 12,000 *plus* Rs. 1,200 or Rs. 13,200 and gross that up to Rs. 14,291. The difference is Rs. 1,091/-. Deduct one-twelfth of that per month and let the Income-tax Officer tear his hair out about the final adjustment.

SERVICE OF NOTICES (SEC. 63).

Notice may be served either by registered post or after the style of a summons issued by a Court (see Code of Civil Procedure, 1908, Or. 5). This, however, does not debar the Income-tax Officer from adopting any other method he may consider advisable under the circumstances of a particular case.

Every order given by an Income-tax Officer for the issue of notices is recorded in writing on the order sheet in the assessee's file and the signature of the assessee or his representative in the margin is in practice often taken as service.

Service on a firm or company is effected if the notice is made over to a responsible official or to a recognised agent. Where there are several partners, service on any one of them is sufficient.

Similarly a notice delivered at the residence of an assessee and signed for by his wife or other person who is generally authorised to accept his correspondence is valid.

Notices need not specify the section of the Act under which they are issued and in the case of companies, firms or other associations, may be addressed to the principal officer; and when the assessee is a Hindu undivided family, to any adult male member.

'Principal officer' is defined in section 2 (*12*) as "(*a*) the secretary, treasurer, manager or agent of the authority, company, body or association, or (*b*) any person connected with the authority, company, body or association upon whom the Income-tax Officer has served a notice of his intention of treating him as the principal officer thereof."

It is only when normal methods of service fail that the Income-tax Officer has recourse to the pasting up of notices, etc.

Invalid service of notices renders subsequent proceedings void.

There is no fixed time laid down for compliance with notices calling for evidence, but the following extract (Income-tax Enquiry Report, page 72) is to the point:—

"The fairly general complaint that the Income-Tax Officers do not show enough consideration for the convenience of the assessee is certainly not without foundation. For instance, notices are issued for the attendance of a number of assessees on the same day and at the same time, and we have seen a group of them waiting with indifferent

accommodation when the office opened to the public, and many of them still waiting when the office closed for the day. We have also seen cases in which apparently without reasonable cause, assessees were given only 24 hours notice to attend the Income-Tax Office to produce evidence, and others in which books were called for and retained for some days pending their examination. Thus our own observations confirm to some extent the complaints made in a number of representations. On the other hand, we found in many cases that assessees themselves were unpunctual and negligent. Nevertheless, we think that appointments should be made as far as possible at reasonable intervals and with due regard to the convenience of the assessee. Such a course would put the officer concerned in a stronger position to deal with the negligent assessee, while leaving no ground for this type of complaint. When selecting buildings for Income Tax Offices, care should be taken to provide as far as possible convenient waiting rooms for assessees. Short period notices should not be given except for adequate reasons and an assessee's books of account should not be detained for long periods except in special circumstances such as in cases of suspected fraud."

SET OFF (SEC. 24).

Carry forward of losses. This has become a very important section of the new Act owing to the new provision made for the carry forward of losses.

Losses can be carried forward now to be set off against subsequent profits in the same business, profession or vocation. Loss assessed in 1939-40 can be carried forward for one year, that assessed in 1940-41 can be carried forward for 2 years and so on until losses are carried forward for 6 years.

Thus, if the assessed income for 1939-40 is *minus* Rs. 1,000, that loss will be carried forward. If the assessed income for 1940-41 is *minus* Rs. 2,000, the loss carried forward from 1939-40 will be lost and a loss of *minus* Rs. 2,000 will now be carried forward for 2 years. If in 1941/42, there is a profit of Rs. 1,000, this will be set against the loss of Rs. 2,000 brought forward and the remaining loss of Rs. 1,000 will be carried forward for one year more.

The Income-tax Officer, in short, is to issue a sort of credit note available first for one year, next for 2 years, and so on until the credit notes are valid for 6 years and these can be put against profits in the same business, profession or vocation so long as they are valid. In the case of an individual, a company, an unregistered firm, a Hindu undivided family or an association of persons the loss can be set off only against future profits from the same source. If the assessee is a registered firm, the losses in any year are allocated to the partners and can be used, not only against future profits of the business but can also be used in the current year against other profits from any source.

What profits of the same business, etc., means remains to be seen. The phrase will certainly give rise to many court cases. It is to be presumed that if a firm carries on business as a hardware merchant and business as a property owner and business as a money-lender, the losses in each will be treated separately. If the respective profits are *plus* Rs. 1,000 *plus* Rs. 1,000 and *minus* Rs. 2,000 the result in that year is zero but if in two years the profits are:—

	Hardware	Property	Money lending
	Rs.	Rs.	Rs.
1.	loss 1,000	loss 2,000	loss 3,000
2.	profit 5,000	profit 1,000	loss 1,000

It is to be presumed that in the first year the three losses totalling Rs. 6,000 will be carried forward but in the second year although the total profits are only Rs. 5,000 the assessment will be on :—

Hardware—Profit Rs. 5,000 less loss Rs. 1,000 brought forward, less loss on money lending Rs. 1,000.
Net Rs. 3,000

Property—Profit Rs. 1,000 less loss brought forward.
Net nil.

Total assessment on ... ... Rs. 3,000

It may be intended to take a liberal view of what "the same business" means. Hardware and machinery sales may be regarded as one business. Conceivably, stock broking and money lending may be regarded as one business but there must be some limit to this liberality and it cannot be intended that all businesses under one man should be regarded as one business. If so, any restriction on the setting off of losses against future profits in other lines is easily avoided by lumping all businesses under one flag. Indeed, in the case of an individual assessee, that process is automatic and inevitable.

Nevertheless, it must be pointed out that any other course is beset with the gravest difficulties. Consider one of the big managing agency houses which sells steel, oil, paper and a dozen other lines, manages various companies and lends money. Its rent, taxes, lift, lighting, telephones, accounts staff, provident fund and supervision are common to the whole business. Is it to divide these up amongst the different businesses so as to be able to show a net profit or loss in each? The allocation is beyond the power of an Income-tax Officer to check and yet it may have a vital effect on the total of the following year's taxable income. Presumably some sort of enlightment on this point will be forthcoming soon but meanwhile assessees must think over the point in their own interests.

Losses of an unregistered firm. These can be set off only against the profits of the firm and carried forward against future profits of the firm (section 24, 1st proviso). It is clear from the wording of this section that the various businesses of a firm are to be considered separately and not considered as one because they are under the same name. The carry forward, if any, therefore must be against the separated profits of the various departments.

Losses of a registered firm. Any losses which cannot be set off against other profits of the firm are to be allocated to the partners. See also section 23 (5) (*a*) which lays down that a registered firm shall not be taxed but the partners.

The losses of a registered firm having been allocated to the partners, those partners can set them off straightaway against profits, or, if that is impossible, they can carry them forward against future profits from the registered firm.

It will be noticed that this seems to be an indication in the opposite direction in the matter of the point first raised.

Suppose a registered firm has three kinds of business, A, B, C and the losses are respectively, Rs. 1,000, Rs. 2,000 and Rs. 3,000. The total loss is Rs. 6,000 and this is allocated to two partners X and Y, Rs. 3,000 each. Y sets his loss against other profits of the same year but X carries his forward. In the following year the firm makes profits of Rs. 4,000 in A, Rs. 5,000 in B and a loss of Rs. 1,000 in C. The assessable profit of the firm is Rs. 8,000.

Surely it is reasonable that X should set his brought forward loss of Rs. 3,000 against his share of profits Rs. 4,000 and pay tax on Rs. 1,000?

Is it necessary to record that X's loss of Rs. 3,000 is due Rs. 500 to A, Rs. 1,000 to B and Rs. 1,500 to C and that his assessment in the second year is

on A Rs. 2,000 less Rs. 500 or Rs. 1,500 ;
on B Rs. 2,500 less Rs. 1,000 or Rs. 1,500 ;
on C *minus* Rs. 500 which he can set against other profits, and *minus* Rs. 1,500 which he must carry forward ;

making his taxable income Rs. 2,500 and a carry forward of Rs. 1,500? This is making things too complicated.

Nevertheless this seems to be the inevitable result of confining carry forward to the same business and assessees will be well advised to set about considering a scheme of allocation of general charges between their separate businesses.

In the event of a succession to a firm or of a change of constitution, a previous loss can only be carried forward by those who were partners at the time the loss was incurred. The law, however, has been slightly relaxed to permit of heirs carrying forward losses—a concession allowed in view of a son's duty to pay his deceased father's debts from any assets he may inherit from him. The son must have, of course, succeeded to his father's share in the firm.

SET OFF OF PARTNERSHIP PROFITS

The relevant sections are 16 (*1*) (*b*), 24 (*1*) Proviso and 10 (*4*) (*b*).

Consider a firm with two equal partners, *A* and *B*, one of whom, *A* gets Rs. 5,000 in the form of salary and interest, the firm shows after making these deductions, a profit of Rs. 10,000. Salary and interest will be disallowed under section 10 (*4*) (*b*) and the firm's assessable income will be Rs. 15,000.

A's share is Rs. 5,000 (salary and interest) and half of Rs. 10,000 profits, or Rs. 10,000. *B*'s share is simply his half share of profits, Rs. 5,000.

If the firm is a registered firm, Rs. 10,000 is taken to *A*'s assessment and is added to his other income or set against other losses. Similarly with *B*'s Rs. 5,000.

If the firm is an unregistered firm, the firm will pay tax on Rs. 15,000. In *A*'s assessment, Rs. 10,000 will be included in his total income [section 16 (*1*) (*b*)] but will not be taxed as the firm has already paid tax [section 14 (*2*) (*a*)]. Similarly with *B*'s Rs. 5,000. If *A* or *B* have otherwise losses, then these profits make no difference.

Suppose, after giving Rs. 5,000 to *A* the firm shows a loss of Rs. 2,500. The firm will be assessed on Rs. 2,500.

A's share is Rs. 5,000 less Rs. 1,250, or Rs. 3,750.
B's share is *minus* Rs. 1,250.

If the firm is a registered firm, *A*'s profit of Rs. 3,750 will be merged with his other income and added to it if he has other profits. If there are other losses the profits will be set against them. *B*'s loss of Rs. 1,250 will be set against his other profits, if any. If none, it will be carried forward against future profits allocated to his share from this firm.

If the firm is an unregistered firm, *A*'s share of Rs. 3,750 will be included in his total income but will not pay tax as the firm has paid tax. *B*'s share of *minus* Rs. 1,250 cannot be set against other profits (section 24) and cannot be carried forward as the firm has made a profit.

If after giving Rs. 5,000 to *A*, the firm shows a loss of Rs. 4,000, the firm's assessable profits will be Rs. 1,000.

A's share will be Rs. 5,000 less Rs. 2,000, or Rs. 3,000.
B's share is minus Rs. 2,000.

If the firm is registered, the position is as in the previous example.

If the firm is unregistered, *A*'s profit of Rs. 3,000 will be included in his total income and will also be taxed as the firm will not have paid tax, its assessable income being only Rs. 1,000. *B's* loss cannot be set off or carried forward as the firm shows a profit.

If after paying Rs. 5,000 to *A* the firm shows Rs. 6,000 loss, the firm's assessable income is *minus* Rs. 1,000 and the position is curious.

A's share is Rs. 5,000 less Rs. 3,000, or *plus* Rs. 2,000.
B's share is *minus* Rs. 3,000.

If the firm is registered, the position is the same as before but what happens if the firm is unregistered?

A's Rs. 2,000 will be included in his total income and will also be taxed as the firm has paid no tax. *B*'s Rs. 3,000 loss cannot be set against other income but it will be carried forward against future profits of the firm. Although the loss of the firm was only *minus* Rs. 1,000, the carry forward of losses should be Rs. 3,000. If next year the firm, under the same conditions makes Rs. 15,000 profit, its taxable income will be Rs. 15,000 *plus* Rs. 5,000 salary, etc, paid to *A*, less Rs. 3,000 losses brought forward, or Rs. 17,000 of which *A*'s share is Rs. 5,000 *plus* Rs. 6,000, or Rs. 11,000 and *B*'s share is Rs. 6,000.

Thus, *A* has benefited by *B*'s loss being carried forward.

The alternative view is that the carry forward of losses cannot exceed the losses of the firm but the Revenue has taxed *A*'s Rs. 2,000 and if only Rs. 1,000 can be carried forward, it actually has a positive taxation figure from a negative profit. This view will probably be the official one.

If after paying Rs. 5,000 to *A* the firm shows Rs. 12,000 loss, the firm's assessable income is *minus* Rs. 7,000 and both *A* and *B*'s share is a *minus* figure.

If the firm is registered, these losses can be set against other income of *A* or *B* or if they cannot be so set they will be carried forward to *A*'s and *B*'s credit and set against future profits from the firm.

If the firm is an unregistered firm, the loss will be carried forward in one figure against future profits in spite of the fact that *A*'s share of the loss is less than that of *B*.

There is one point to be noted about these calculations. If *A* gets Rs. 5,000 salary and interest and the firm shows a

loss of Rs. 2,999, the assessable profit of the firm is Rs. 2,001 and the firm will pay tax of -/8/- only if unregistered.

A's share is Rs. 5,000 less Rs. 1,499/8, or Rs. 3,500/8 and *B*'s share is *minus* Rs. 1,499/8.

A's share will go into his total income but will not pay tax because the firm has paid tax.

If, however, the firm's loss is Rs. 3,001, the firm's assessable profit will be Rs. 1,999 and the firm will not pay tax. *A*'s share would now be Rs. 3,499/8 which would go into *A*'s total income and would also pay tax because the firm had not paid tax. Under such circumstances it would clearly pay *A* to forego Rs. 2 of interest.

There is another point in this connection worth noting. An assessee has shares in three registered firms.

His share in firm *A* is a loss of Rs. 5,000.
His share in firm B is a loss of Rs. 6,000.
His share in firm C is a profit of Rs. 7,000.

Under section 24 he is entitled to have his loss set off if he wants to, which means that he is not compelled to ask for a set off unless he so desires. It follows that he can decide against which income losses are to be set or which loss is to be set off against income.

If he feels that firm *A* is likely to make profits in future while firm *B* is set for a long period of losses, he will naturally set off the Rs. 6,000 losses in *B* against the profits in *C* and Rs. 1,000 of *A* losses leave Rs. 4,000 to be carried forward against *A*.

Carry forward is not permitted when set off is possible.

THE SLAB SYSTEM

First	...	1,500/-	...	No tax.
Next	...	3,500/-	@	9 p. in the rupee.
Tax on	...	5,000/-	...	Rs. 164/1/-.
Next	...	5,000/-	@	1 a. 3 p. in the rupee.
Tax on	...	10,000/-	...	Rs. 554/11/-.
Next	...	5,000/-	@	2 as. in the rupee.
Tax on	...	15,000/-	...	Rs. 1,179/11/-.
Above	...	15,000/-	@	2 as. 6 p. in the rupee.

Companies and Local Authorities pay, at the maximum rate without any free slab.

The following are the super-tax rates:—

First	...	25,000/-	...	Free.
Next	...	10,000/-	@	1 a. in the rupee.
Next	...	20,000/-	@	2 as. in the rupee.
Next	...	70,000/-	@	3 as. in the rupee.
Next	...	75,000/-	@	4 as. in the rupee.
Next	...	150,000/-	@	5 as. in the rupee.
Next	...	150,000/-	@	6 as. in the rupee.
Balance	...	...	@	7 as. in the rupee.

Companies and Local Authorities pay at one anna on the rupee on their entire income, without any free slab.

The cardinal point to remember, however, is that only for those few people whose total income is the same as the taxable income can the amount of tax payable be got directly from the above scale.

For all those assessees who are members of a recognised provident fund, have any tax free income, have any income from a separate unregistered firm, have any insurance policies, have any security or dividend income, etc., the slab system is used only for getting the rate of tax.

The total income is taken and the slab system is applied to get the tax on the total income. That is converted into a rate per rupee on the total income, preferably by use of the Income-Tax Ready Reckoner supplied by the Government of India Publication Department and that rate is applied to the taxable income.

Taking for an example an extreme case:—

Suppose a man has salary of Rs. 5,000 per annum and income tax free securities yielding Rs. 20,000 per annum. His total income is Rs. 25,000 and on that the tax is Rs. 2,742/3 and the rate is 21·06 pie. That rate applied to Rs. 5,000 gives the tax payable which is Rs. 548/7.

The figures can be looked at another way.

Rs. 5,000 is one-fifth of Rs. 25,000, the total income. Applying one-fifth of the slab rates, the tax is:—

Rs. 300 at zero	...		*nil.*
700 ,, 9 p.	...	Rs.	32/13
1,000 ,, 1 a. 3 p.	.	,,	78/2
1,000 ,, 2 as.	...	,,	125/-
2,000 ,, 2 as. 6 p.	...	,,	312/8
	...	Rs.	548/7.

Such a man therefore only gets in reality Rs. 300 free of tax. The slab system in short provides a gradually varying rate of tax, different for each rupee in income, the rate for each rupee varying according to the total income of the assessee.

SPECULATION PROFITS—SHARE DEALING PROFITS

There is no part of the law which is in a greater state of muddle than that relating to such dealings. The law exempts :—

"Any receipts not being receipts arising from business or the exercise of a profession, vocation or occupation which are of a casual and non-recurring nature or are not by way of addition to the remuneration of an employee." [Section 4 (3) *vii*].

With this must be read the definition of business which is "business includes any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture." [Section 2 (4)].

As regards share speculation in particular it is the custom of the Department to start taxing this line when a profit occurs. No one can blame the Department for that. It is its business to collect taxes but assessees should not sit down so meekly. When there is a loss it should be claimed as a business loss and if this claim is rejected, at any rate the Department has committed itself to a statement that the assessee is not in this line of business. That is a very considerable protection in itself and it costs nothing to get it. As to what is the correct view—it is difficult to be dogmatic. Certainly, however, the fact that some one buys shares, or indeed anything else with a hope that he will sell at a profit is quite irrelevant. No one buys pictures, old books or anything else without hoping that the market will go up and the Courts have held very definitely that that hope is not the test.

It would seem that there are only two really sound tests, first the volume of business and second the manner of conducting it.

As regards volume, the Department, in Bengal at any rate, had a rough and ready test that if the volume of purchases and sales was 1½ times the annual normal income in any year the activity might be considered a business. That criterion was as foolish as it was inadequate. Any punter will buy and sell to that extent. One transaction might frequently give the necessary qualification. As for the method of business—if an assessee keeps any accounts there is a tendency to regard him as being in this line of business. If he does not keep accounts, he cannot claim to be in the business if the I. T. O. resists.

It would seem that the only practicable way is to regard only registered brokers as in this line. It is true that there are plenty of other people doing a lot of buying and selling but taking these by and large they are gambling with the dice loaded against them.

If outsiders must be considered then why not treat all out-and-out purchases and sales as investments and all margin transactions as business? There is some sort of cock-eyed logic in that and since the outsider has to support the broker in comparative affluence the Department would be acting as a moral censor and since most punters lose would also be very literally tempering the wind to the shorn lamb—an action which it is said brings considerable merit.

This suggestion is quite contrary to accepted ideas but there is nothing certain in the actions of the Department and this method would, at any rate, let assessees know where they stand.

Why the department worries about the matter at all is beyond comprehension. It loses quite a lot of revenue. To come down to more practical considerations—Profits on such business can be worked out on the cash basis or on the mercantile basis, opening and closing stocks being valued at cost or market price, whichever is lower. On the cash basis, which fortunately for assessees is the one normally applied to persistent punters, only the results of sales are considered. Any sale of shares is compared with the corresponding purchase price whenever it occurred and the profit or loss is worked out accordingly. That is a very lucky thing because the assessee holding on to some shares which he bought above their present value and finding himself liable to taxation on other heads can sell and rebuy thus bringing a loss into the picture. In short, under such conditions the computation of his loss or profit is largely in his own hands.

Meanwhile assessees should note that as soon as they have any losses they should claim them as business losses. It will not do harm. It may do good. To wait and let the Income-tax Officer start the ball in a good year is foolishness.

SUPERANNUATION FUNDS (SECS. 58N TO 58V).

These are a new departure. Such funds have to be approved by the Central Board and are radically different from Recognised Provident Funds and are necessarily more elastic.

The fund must have trustees and must be for the provision of annuities for employees on retirement or for their widows and dependents.

In the case of a Recognised Provident Fund, the position of each member is certain and defined. With a Superannuation Fund, the position is essentially vague. What can be done for the members depends on life risks and possibly on the profits of the company.

The Company's contribution is an allowable expense and will ordiarily be a contribution based on the number of employees, or the earnings of the company, or a fixed sum. No guidance is yet available as to what percentage of profits will be approved by the Board but contributions to recognised provident funds often average 20 per cent to 25 per cent of the profits of an employer and possibly, some such sort of contribution will be approved. Presumably, too, the decision will be influenced by the existence, or otherwise, of a provident fund. Besides the ordinary annual contribution, employers may, in specially favourable years, want to contribute an extra sum to the Superannuation Fund. Whether that is to be treated as the expense of that year, or as an expense to be spread over several years, will be settled by the Central Board. Apparently it must be treated in some way as an expense, but that seems an unnecessarily wide concession.

Employers will be wise, however, to get everything as cut and dried as possible in the rules and to make some sort of provision in the rules for these special contributions which will depend normally on good profits.

The employee's contribution will come off his taxable income, subject to the usual Rs. 6,000 limit.

Funds which are not solely for the provision of annuities can be approved. Other possible objects are burial or cremation expenses and provision for marriage expenses.

The sections provide for taxation of money repaid and returns. The Superannuation Fund Chapter certainly seems to provide for a long needed want. The trustees must be left wide

discretion as to the application of the proceeds and we believe that such a fund will appeal to employers who fear the burden of inescapable subscriptions to a Provident Fund but are prepared to devote a percentage of profits to the welfare of their employees while the employees on their side will prefer a Superannuation Fund administered by broad minded trustees to a Provident Fund which, for junior members in their earlier years, offers very little protection.

It is now possible for employers to give some of the protection offered by Insurance Companies.

SUPER-TAX

Super-tax is an extra income-tax on the richer classes without any of the concessions. A registered firm does not pay any tax. The profits are allocated to the partners who pay themselves. A company pays its own super-tax which is a sort of Corporation tax and is not paid on behalf of or refundable to shareholders.

If an unregistered firm or association has paid super-tax the partners or members do not pay on their share but if the firm or association has not paid, the members pay . (Section 55).

Under section 23 (5) (*b*), the Income-tax officer can now assess an unregistered firm as a registered one if he wishes. This is in order to stop a simple loophole. If two rich people had in partnership a registered firm with Rs. 40,000 profits, Rs. 20,000 would be added to their other income and might at the top rate incur a lot of super-tax. If they cared not to register it, the firm would pay super-tax on Rs. 15,000 only at the lower rates and the partners would not pay super-tax on their shares. This method of avoidance is now closed.

Super-tax is taken on the total income. There are no concessions for insurance, provident fund contributions, etc.

Super-tax is payable on the income from tax free securities.

For deductions at source see note *"Deductions at Source"*.

TAXABLE INCOME

Referring to the headings set out in *Total Income.*—

(a) Recognised provident funds. The employer's contribution, the employee's contribution and all interest credited are included in total income but the employer's contribution and the employee's contribution are exempt from tax, provided the two together do not exceed one-sixth of the employee's salary, or Rs. 6,000, whichever is less.

The interest credited is exempt from tax if it does not exceed one-third of the salary for the year and does not exceed the rate of interest approved. This is 6 per cent.

It will be seen that interest can be taxed only in the case of long standing employees or in the case of a very generous employer.

Example: A man on Rs. 12,000 a year salary contributes Rs. 1,000 a year himself, the employer contributes Rs. 1,000 a year and the interest allowed at 5 per cent on his balance is Rs. 2,000. His total income is Rs. 12,000 plus Rs. 1,000 plus Rs. 2,000, or Rs. 15,000. His taxable income is Rs. 11,000 at the rate applicable to Rs. 15,000.

Example: A man on Rs. 12,000 a year contributes Rs. 1,500 a year himself. His employer contributes Rs. 1,500 a year and the interest on the amount at his credit at 7 per cent is Rs. 5,000. His total income is Rs. 12,000 plus Rs. 1,500 plus Rs. 5,000, or Rs. 18,500. His taxable income is Rs. 18,500 less, on account of contributions Rs. 2,000 (one-sixth of his salary, the rest of the Rs. 3,000 being disallowed), less on account of interest Rs. 4,000 (one-third of his salary, the rest of the Rs. 5,000 being disallowed). His taxable income is therefore Rs. 12,500 at the rate applicable to Rs. 18,500.

(b) Insurance and Provident funds. The deductions allowed on account of insurance and provident funds are limited as follows:—

His own contribution and the employer's contribution to a recognised provident fund cannot be exempted beyond one-sixth of salary or Rs. 6,000, whichever is less. His contributions to any provident fund together with his employer's contribution to a recognised provident fund and premiums on insurance policies cannot exceed together with the other items mentioned

in section 15 (3) one-sixth of total income (see below) or six thousand rupees, whichever is less.

Example: A man on Rs. 12,000 a year salary contributes Rs. 1,200 to a recognised provident fund and his employer contributes Rs. 1,200. His interest at 5 per cent. is Rs. 300. He pays life insurance premiums of Rs. 1,400 and his income from dividends gross is Rs. 4,000.

His total income is:—

Salary	. Rs.	12,000
Employer's contribution	. ,,	1,200
Interest	,,	300
Dividends ...	,,	4,000
Total ...	Rs.	17,500

Exemptions: His own contribution and his employer's

limited to	... Rs.	2,000
Interest	... ,,	300
Insurance	... ,,	666
Balance taxable ...	... ,,	14,534

The total exemptions cannot exceed one-sixth of total income, which for this purpose does not include the employer's contribution or interest in a Recognised Fund. The total income is therefore Rs. 16,000. Exemption limit Rs. 2,666. Two thousand is already exempted in the Fund so only Rs. 666 of insurance payments is exempt. (See Sec. 58E).

TAXABLE INCOME—BASIS OF (SEC. 4)

	Full Resident	Resident who is not ordinarily resident	non-resident
British Indian income ...	taxable	taxable	taxable
Foreign income brought into British India ...	taxable	taxable	not taxable
Foreign income received in India	taxable	taxable	taxable
Foreign income from business controlled in India or profession or vocation set up in *India* not brought to or received in British India	taxable	taxable	not taxable
All other foreign income not brought to or received in British India	taxable	not taxable	not taxable

In the case of foreign income of all sorts not brought to India, there is an exemption of Rs. 4,500.

Care must be taken to distinguish between "brought into B. India", and "received in B. India". Income can be received once only.

TEA ESTATES AND TEA DIVIDENDS

By a long standing convention 60 per cent of the income of a Tea Estate has been held to be agricultural income and 40 per cent business income taxable under the Act.

Dividends from Tea Estate Companies were similarly held to be 40 per cent taxable. If a shareholder received Rs. 100 dividend, 40 per cent was held to be income. That was grossed up to say Rs. 47/8 and included in his total income and refund was given on the difference between the appropriate rate on his total income and the maximum rate on that figure. In the Hungerford Trust case, the Privy Council said that this was illegal and that the Department had no right to disintegrate a dividend into agricultural and non-agricultural income. They should have, according to that decision, taken Rs. 100 grossed up to about Rs. 115/- as part of the total income and should have given a refund on that. Incidentally they should also have charged super-tax on it when the income was super-taxable.

The Enquiry Report referred to this decision and came to the same conclusion but the Department took no notice and continued to assess in a manner admittedly illegal. Any reference to tax dodging is fully met by this clear case of tax snatching.

In the new Act, when an assessee receives Rs. 100 dividends from a Tea Company, that will be grossed up by the amount of difference between the gross of Rs. 40 and Rs. 40 net, *i.e.* Rs. 47/8.

He will pay tax and super-tax on Rs. 107/8 and will be given credit for Rs. 7/8. Thus does the Department make the best of both worlds.

The official view is different. See *"Dividends"*.

There are one or two other points about the assessment of Tea Companies or Tea Concerns. Some make a profit on dealing in quota certificates. That is taxable 100 per cent. Some concerns buy green leaf and produce ordinary tea. The profit is all taxable. If a garden sells its own quota certificate 40 per cent of price is taxable.

There have been cases in which the Income-tax Officer has taxed the profits on such transactions at 100 per cent (which is right) but has worked out the profit on the same basis as for garden grown tea which is of course absolutely wrong. Tea Concerns should have ready the cost of the factory processes per pound as well as the cost of growing per pound.

TOTAL INCOME

This figure is essential to fix the rate of tax. It is obtained by adjusting, in addition to ordinary taxable income the following items—

(*a*) By adding, in the case of recognised provident funds, the employer's contribution and all interest credited to the account (section 58E).

(*b*) By ignoring any deductions allowed on account of taxable income because of Provident fund or insurance payments made by the assessee (section 7 (1), 2nd Proviso, section 15 (1) and section 16).

(*c*) Add income from tax free securities (sections 8 & 16).

(*d*) Add profits from an unregistered firm which has paid tax.

(*e*) Add income from an association of persons other than a H. U. F., company or firm which has paid tax.

(*f*) Add the income-tax taken off dividends, that is to say, the dividend has to be grossed up to a figure which yields the net dividend. If the gross dividend is Rs. 100 the shareholder receives net Rs. 100 less -/2/6 in the rupee, Rs. 84/6. The total income has to include Rs. 100.

(*g*) Add the gross amount of interest, *i.e.*, net amount plus tax deducted.

The total income is thus worked out and that determines the rate per rupee applicable to the assessee's taxable income.

TRUSTEES, GUARDIANS AND BENEFICIARIES
(SECS. 40, 41 and 42)

The law here has been considerably obscured owing to changes in section 4.

In the case of guardians, trustees or agents of minors, lunatics or non-residents tax is recoverable on what the guardian etc. was entitled to receive on behalf of such beneficiary in the same manner as it would be chargeable on the minor, lunatic or non-resident as if he were a major, sound in mind or resident respectively.

In the case of a non-resident, the tax can also be levied on or recovered from him direct.

It would appear that in the case of an agent of a non-resident, the agent can be taxed as if the non-resident were resident, i.e., at the appropriate rate of a resident. But what if the non-resident is a foreigner? A non-resident foreigner is due to pay tax at the maximum rate under section 17. If the Income-tax Officer can only tax the agent at the appropriate rate, it looks as if he will always use the proviso and tax the foreigner non-resident direct at the maximum rate, recovering the tax from assets in the hands of the agent. This is rather a cumbersome sort of arrangement but perhaps it will work out all right. It adds, however, to the difficulties of an agent. Is he to retain tax at the maximum rate which will be imposed if the foreigner is taxed direct or at the appropriate rate which he will have to pay if he is to be treated as the assessee? Presumably, at the appropriate rate and leaving the Income-tax Officer to worry about the rest.

Further, if the non-resident is treated as a resident he will be liable on his foreign income too. Will he be treated as a full resident or as a not ordinarily resident? Clearly this section will give trouble as it stands and must be cleared up somehow.

The same applies to minor or lunatic non-residents and non-resident foreigners.

What about those trust accounts which are kept on the cash basis? The tax is to be taken on what the guardian etc. is entitled to receive. It looks as if such people are to be forced on to the mercantile system of accounts and in the case of an

agent who runs his business on the cash system this is likely to cause much confusion.

The same principles apply to income beneficiaries are entitled to receive from the Court of Wards, Official Trustee, Administrator General or any trustees under a trust deed. The tax is based on the income of the beneficiary but when the shares of beneficiaries are not specified tax is payable at the maximum rates. Under the old Act, tax was taken from the trustee as if he were the holder of the income of the trust and at rates appropriate to the income of the trust.

This new law that tax shall be taken at the maximum rate is going to work very hardly on the smaller trusts and every effort must be made to allot specific shares to the various beneficiaries.

The proviso to section 41 deals with the taxation of the unspecified shares of beneficiaries. There is no such proviso in section 40 and so two minors with unspecified shares will pay at the rate appropriate to their combined income.

An important point to remember in this connection is the difference between Executors and Trustees. Executors are the owners of the property in their own right as executors until they have handed it over to the beneficiaries or having fulfilled their functions as executors, begin to operate as trustees. As executors, all the income will be taxed jointly in their hands. As trustees, they pay separately for each beneficiary.

VISITORS

The position *re* visitors has not been made plain. It seemed clear from the history of the new Act that it was not intended to tax visitors but to discover the way this has been accomplished is likely to tax the ingenuity of the visitors themselves.

Section 4 (*1*) (*a*) makes taxable in all hands, including those of non-residents "income, profits and gains from whatever source derived which are received or are deemed to be received in British India in such year by or on behalf of such a person".

There seems to be nothing left in the new Act which gives any special significance to the term "deemed to be received". So non-residents pay on what is received under section 4 (*1*) (*a*). They also pay under section 4 (*1*) (*c*) on what accrues and arises but the visitor, pure and simple, has no business or property etc. in India.

It will be noticed that in the case of residents they pay under sec. 4 (*b*) (*iii*) on what is received or brought in and from that difference in wording it appears that the distinction is vital. "Received" means income paid in British India. "Brought" refers to income received originally abroad and brought in by the owner. On this brought in income the non-resident is not liable.

Visitors cease to be visitors if they are 182 days in India in the year ending 31st March. It does not matter if it is in one period or several periods. They can, of course, be here longer if the period covers days in two financial years. If they arrive on October 3rd and leave on September 28th, they can be here practically a year nor does it matter if they take a house. They would have, however, to be careful that the house was not theirs for more than 182 days in any financial year.

If a visitor by overstaying his 182 days becomes a resident, he still remains "not ordinarily resident" and he will pay on :

1. Any foreign income from a business controlled in, or a profession or vocation set up in India.

It is unlikely that a visitor has any income from a profession or vocation set up in India. That refers to such cases as doctors' fees.

The phrase, however, "business controlled in India" is more dangerous. If the visitor is the proprietor of a one-

man business or a managing director, is the business controlled in India when he is in India? It is a question of fact but it is possible to conceive of cases in which the facts could be interpreted in different ways. If taxable, the Rs. 4.500 exemption on income not remitted would apply.

2. All remittances, whatever the source.

Commercial travellers and business men visiting Indian organisations must be more careful. See under *"Commercial Travellers"*.

Visitors should note that if they do happen to earn in India any income which is taxable, the rate of tax will not be the rate appropriate to what they earn but to their world income. (Section 17).

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*CONTENTS

* Sections which are new have been printed in italics.

SECTIONS

12-A. *Managing Agency Commission.*
13. Method of accounting.
14. Exemptions of a general nature.
15. Exemption in the case of life insurances.
16. Exemptions and exclusions determining the total income.
17. *Determination of tax payable in certain special cases.*

CHAPTER IV.

Deduction and Assessment.

18. Payment by deduction at source.
19. Payment in other cases.
19-A. Supply of information regarding dividends.
20. Certificate by company to shareholders receiving dividends.
20-A. Supply of information regarding interest.
21. Annual return.
22. Return of income.
23. Assessment.
23-A. *Power to assess individual members of certain companies.*
24. Set-off of loss in computing aggregate income.
24-A. Assessment in case of departure from British India.
24-B. Tax of deceased person payable be representative.
25. Assessment in case of discontinued business.
25-A. Assessment after partition of a Hindu undivided family.
26. Change in constitution of a firm.
26-A. Procedure in registration of firms.
27. Cancellation of assessment when cause in shown.
28. Penalty for concealment of income or improper distribution of profits.
29. Notice of demand.
30. Appeal against assessment under this Act.
31. Hearing of appeal. ...
32. Appeals against orders of Assistant Commissioner.
33. Power of revision.
33-A. [Omitted].
34. Income escaping assessment.
35. Rectification of mistake.
36. Tax to be calculated to nearest anna.

CHAPTER VII.

Refunds:

SECTIONS

48. Refunds.
48-A. [Omitted].
49. Relief in respect of United Kingdom Income-tax.
49-A. *Relief in respect of Indian State and Dominion income-tax.*
49-B. *Payment of income-tax by company to be deemed payment by shareholder.*
49-C. *Relief granted to a company to be deemed relief granted to shareholder.*
49-D. *Relief in respect of tax charged in country not providing for relief in respect of British Indian income-tax.*
49-E. Power to set off amount of refunds against tax remaining payable.
49-F. Power of representative of deceased person or person disabled to make claim on his behalf.
50. Limitation of claims for refund.
50-A. [Omitted.]

CHAPTER VIII.

Offences and Penalties.

51. Failure to make payments or deliver returns or statements or allow inspection.
52. False statement in declaration.
53. Prosecution to be at instance of Inspecting Assistant Commissioner.
54. Disclosure of information by a public servant.

CHAPTER IX.

Super-tax.

55. Charge of super-tax.
56. Total income for purposes of super-tax.
57. [Omitted].
58. Application of Act to super-tax.

CHAPTER IX-A.

Special provisions relating to certain classes of provident funds.

CHAPTER IX-B.

Special provisions relating to certain classes of superannuation funds.

CHAPTER X.

Miscellaneous.

SECTIONS

THE INDIAN INCOME-TAX ACT[1]

An Act to consolidate and amend the law relating to Income-tax and Super-tax.

(*As Amended up-to-date*)[2].

[*5th March, 1922*].

ACT NO. XI OF 1922.

Whereas it is expedient to consolidate and amend the law relating to Income-tax and Super-tax ; It is hereby enacted as follows:

Short title, extent and commencement.

1. (*1*) This Act may be called the Indian Income-tax Act, 1922.

[[3] (2) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas, and applies also, within the Indian States and the tribal areas, to British subjects who are in the service of the Crown or of a local authority

[1] For Statements of Objects and Reasons, *see* Gaztte of India, 1921, Pt. V, p. 159; and for Report of Joint Committee, *see ibid*, 1922, Pt. V, p. 31.

This Act has been declared in force in the district of Khondmals by s. 3 and Sch. of the Khondmals Laws Regulation, 1936 (IV of 1936), and in the district of Angul by s. 3 and Sch of the Angul Laws Regulation, 1936 (V of 1936).

The Act has been applied with certain exceptions to persons in the Chittagong Hill-tracts, by s 2 of the Chittagong Hill-tracts Laws Regulation, 1937 (Ben. Reg. 2 of 1937).

[2] This book contains amendments and modifications by all Acts up to Act VII of 1939 as also by the Government of India (Adaptation of Indian Laws) Order, 1937.

Part I of the amending Act VII of 1939 containing ss. 2—84 comes into effect from the 1st April, 1939, except clauses (*vi*) and (*vii*) of sub-section (*2*) of section 10 which will come into effect on the 1st April, 1940. *Part II* containing ss. 85—92 which deals with Appellate Tribunal shall come into force from a date not later than 2 years from the date of coming into force of Part I to be notified by the Central Government. (*Gazette of India, dated the 18th March, 1939*). The amendments in both parts have been incorporated in the text of the Act and Part II has also been printed separately at the end of the book.

[3] Substituted by the Government of India (Adaptation of Indian Laws) Order, 1937.

established in the exercise of the powers of the Crown Representative or the Central Government in that behalf, and to all other servants of the Crown in the said States and areas.]

(3) It shall come into force on the first day of April, 1922.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(1) "agricultural income" means—

(*a*) any rent or revenue derived from land which is used for agricultural purposes, and is either assessed to land-revenue in British India or subject to a local rate assessed and collected by officers of the Crown as such ;

(*b*) any income derived from such land by—

(*i*) agriculture, or

(*ii*) the performance by a cultivator or receiver of rent-in-kind of any process ordinarily employed by a cultivator or receiver of rent-in-kind to render the produce raised or received by him fit to be taken to market, or

(*iii*) the sale by a cultivator or receiver of rent-in-kind of the produce raised or received by him, in respect of which no process has been performed other than a process of the nature described in sub-clause (*ii*) ;

(*c*) any income derived from any building owned and occupied by the receiver of the rent or revenue of any such land, or occupied by the cultivator, or the receiver of rent-in-kind, of any land with respect to which, or the produce of which, any operation mentioned in sub-clauses (*ii*) and (*iii*) of clause (*b*) is carried on :

Provided that the building is on or in the immediate vicinity of the land, and is a building which the receiver of the rent or revenue or the cultivator or the receiver of the rent-in-kind by reason of his connection with the land, requires as a dwelling-house, or as a store-house, or other out-building ;

(2) "assessee" means a person by whom Income-tax is payable ;

(3) "*Appellate* Assistant Commissioner" means a person appointed to be an *Appellate* Assistant Commissioner of Income-tax under section 5 ;

(4) "business" includes any trade, commerce, or manufacture or any adventure or concern in the nature of trade, commerce or manufacture ;

(4-A) "The Central Board of Revenue" means the Central Board of Revenue constituted under the Central Board of Revenue Act, 1924 ;

(5) "Commissioner" means a person appointed to be a Commissioner of Income-tax under section 5 ;

(6) "Company" means a company as defined in the Indian Companies Act, 1913, or formed in pursuance of an Act of Parliament or of Royal Charter or Letters Patent, or of an Act of the Legislature of a British possession, and includes any foreign association carrying on business in British India whether incorporated or not, and whether its principal place of business is situate in British India or not, which the Central Board of Revenue may, by general or special order, declare to be a company for the purposes of this Act ;

(6-A) "Dividend" includes—

(a) any distribution by a company of accumulated profits, whether capitalised or not, if such distribution entails the release by the company to its shareholders of all or any part of the assets of the company ;

(b) any distribution by a company of debentures or debenture-stock, to the extent to which the company possesses accumulated profits, whether capitalised or not ;

(c) any distribution made to the shareholders of a company out of accumulated profits of the company on the liquidation of the company:

Provided that only the accumulated profits so distributed which arose during the six previous years of the company preceding the date of liquidation shall be so included ; and

(d) any distribution by a company on the reduction of its capital to the extent to which the company possesses accumulated profits which arose after the end of the previous year ending next before the 1st day of April, 1933, whether such accumulated profits have been capitalised or not :

Provided that "dividend" does not include a distribution in respect of any share issued for full cash consideration which is not entitled in the event of liquidation to participate in the surplus assets, when such distribution is made in accordance with sub-clause (c) or (d).

Explanation.—The words "accumulated profits", wherever they occur in this clause, shall not include "capital profit".

(*6-B*) "firm", "partner" and "partnership" have the same meanings respectively as in *the Indian Partnership Act, 1932; provided that the expression 'partner' includes any person who being a minor has been admitted to the benefits of partnership;*

(6-C) "income" includes anything included in 'dividend' as defined in clause (6-A) and anything which under Explanation 2 to sub-section (1) of section 7 is a profit received in lieu of salary for the purposes of that sub-section and any sum deemed to be profits under the second proviso to clause (vii) of sub-section (2) of section 10 and the profits of any business of insurance carried on by a mutual insurance company computed in accordance with Rule 9 in the Schedule;

(6-D) "Inspecting Assistant Commissioner" means a person appointed to be an Inspecting Assistant Commissioner of Income-tax under section 5;

(*7*) "Income-tax Officer" means a person appointed to be an Income-tax Officer under section 5;

(*8*) "Magistrate" means a Presidency Magistrate or a Magistrate of the first class, or a Magistrate of the second class specially empowered by the Central Government to try offences against this Act;

(*9*) "person" includes a Hindu undivided family *and a local authority;*

(*10*) "prescribed" means prescribed by rules made under this Act;

(*11*) "previous year" means *in respect of any separate source of income, profits and gains*—

(*a*) the twelve months ending on the 31st day of March next preceding the year for which the assessment is to be made, or, if the accounts of the assessee have been made up to a date within the said twelve months in respect of a year ending on any date other than the said 31st day of March, then at the option of the assessee the year ending on the day to which his accounts have so been made up:

Provided that where an assessee has once been assessed in respect of a particular source of income, profits and gains, he shall not in respect of that source exercise this option so as to vary the meaning of the expression 'previous year' as then applicable to him except with the consent of the Income-tax Officer and upon such conditions as the Income-tax Officer may think fit; or

(*b*) in the case of any person, business or company or class of person, business or company, such period as may be determined by the Central Board of Revenue or by such authority as the Board may authorise in this behalf ; *or*

(c) where a business, profession or vocation has been newly set up in the financial year preceding the year for which assessment is to be made, the period from the date of the setting up of the business, profession or vocation to the 31st day of March next following or to the last day of the period determined under sub-clause (b), or, if the accounts of the assessee are made up to some other date than the 31st day of March and the case is not one for which a period has been determined by the Central Board of Revenue under sub-clause (b), then at the option of the assessee, the period from the date of the setting up of the business, profession or vocation to such other date:

Provided that when such other date does not fall between the setting up of the business, profession or vocation and the next following 31st day of March, it shall be deemed that there is no previous year ; and

when the assessee is a partner in a firm, 'previous year' in respect of his share of the income, profits and gains of the firm means the previous year as determined for the assessment of the income, profits and gains of the firm ;

(*12*) "principal officer" used with reference to a local authority or a company or any other public body or any association, means—

(*a*) the secretary, treasurer, manager or agent of the authority, company, body or association, or

(*b*) any person connected with the authority, company, body or association upon whom the Income-tax Officer has served a notice of his intention of treating him as the principal officer thereof ;

(*13*) "public servant" has the same meaning as in the Indian Penal Code ;

(*14*) "registered firm" means a firm registered under the provisions of section 26-A ;

(*15*) "total income" means total amount of income, profits and gains *referred to in sub-section (1) of section 4* computed in the manner laid down in this Act, and

"total world income" includes all income, profits and gains wherever accruing or arising except income to which,

under the provisions of sub-section (3) of section 4, this Act does not apply ; and

(16) "unregistered firm" means a firm which is not a registered firm.

CHAPTER I.

CHARGE OF INCOME-TAX.

Charge of Income-tax.

3. Where any Act of the Central Legislature enacts that income-tax shall be charged for any year at any rate or rates[1] * * * tax at that rate or those rates shall be charged for that year in accordance with, and subject to the provisions of, this Act in respect of [2][*the total income*] of the previous year of every individual, Hindu undivided family, *company and local authority, and of every firm and other association of persons or the partners of the firm or members of the association individually.*

Application of Act.

4. (1) *"Subject to the provisions of this Act, the total income of any previous year of any person includes all income, profits and gains from whatever source derived which—*

(a) are received or are deemed to be received in British India in such year by or on behalf of such person, or

(b) if such person is resident in British India during such year,—

(i) accrue or arise or are deemed to accrue or arise to him in British India during such year, or

(ii) accrue or arise to him without British India during such year, or

(iii) having accrued or arisen to him without British India before the beginning of such year and after the 1st day of April, 1933, are brought into or received in British India by him during such year ; or

[1] The words "applicable to the total income of an assessee" were omitted by s. 3 of the Income-tax (Amendment) Act VII of 1939.
[2] Substituted for "all income, profits and gains", *ibid.*

(c) if such person is not resident in British India during such year, accrue or arise or are deemed to accrue or arise to him in British India during such year:

Provided that there shall not be included in any assessment for the year ending on the 31st day of March, 1940, both the amount of the income, profits and gains referred to in sub-clause (ii) of clause (b) and the amount of the income, profits and gains referred to in sub-clause (iii) of clause (b) but only the greater of these two amounts:

Provided further that, in the case of a person not ordinarily resident in British India, income, profits and gains which accrue or arise to him without British India shall not be so included unless they are derived from a business controlled in or a profession or vocation set up in India or unless they are brought into or received in British India by him during such year:

Provided further that if in any year the amount of income accruing or arising without British India exceeds the amount brought into British India in that year, there shall not be included in the assessment of the income of that year so much of such excess as does not exceed four thousand five hundred rupees.

Explanation 1.—Income, profits and gains accruing or arising without British India shall not be deemed to be received in or brought into British India within the meaning of this sub-section by reason only of the fact that they are taken into account in a balance-sheet prepared in British India.

Explanation 2.—Income which would be chargeable under the head 'Salaries' if payable in British India and not being pension payable without India shall be deemed to accrue or arise in British India wherever paid if it is earned in British India.

Explanation 3.—A dividend paid without British India shall be deemed to be income accruing and arising in British India to the extent to which it has been paid out of profits subjected to income-tax in British India.

(2) For the purposes of sub-section (1), where a husband is not resident in British India, remittances received by his wife resident in British India out of any part of his income which is not included in his total income shall be deemed to be income accruing in British India to the wife.

(3) Any income, profits or gains falling within the following classes shall not be included in the total income of the person receiving them:—

(*i*) Any income derived from property held under trust or other legal obligation wholly for religious or charitable purposes, and in the case of property so held in part only for such purposes, the income applied, or finally set apart for application thereto.

(i-a) Any income derived from business carried on on behalf of a religious or charitable institution when the income is applied solely to the purposes of the institution and—

(a) the business is carried on in the course of the carrying out of a primary purpose of the institution, or

(b) the work in connection with the business is mainly carried on by beneficiaries of the institution.

(*ii*) Any income of a religious or charitable institution derived from voluntary contributions and applicable solely to religious or charitable purposes.

(*iii*) The income of local authorities *except income from a trade or business carried on by the authority so far as that income is not income arising from the supply of a commodity or service within its own jurisdictional area.*

(*iv*) Interest on securities which are held by, or are the property of, any Provident Fund to which the Provident Funds Act, 1925 applies,

(*v*) [*Omitted by Income-tax (Am.) Act of 1939.*]

(*vi*) Any special allowance, benefit or perquisite specifically granted to meet expenses wholly and necessarily incurred in the performance of the duties of an office or employment of profit.

(*vii*) Any receipts not being receipts arising from business or the exercise of a profession, vocation or occupation, which are of casual and non-recurring nature, or are not by way of addition to the remuneration of an employé.

(*viii*) Agricultural income.

(*ix*) Any income received by trustees on behalf of a recognised provident fund as defined in clause (*a*) of section 58-A.

In this sub-section "charitable purpose" includes relief of the poor, education, medical relief, and the advancement of any other object of general public utility, *but nothing contained in clause (i) clause (ia) or clause (ii) shall operate to exempt from the provisions of this Act that part of the income of a*

private religious trust which does not ensure for the benefit of the public.

Residence in British India.

4-A. *For the purposes of this* Act—

(a) any individual is resident in British India in any year if he—

(i) is in British India in that year for a period amounting in all to one hundred and eighty-two days or more ; or

(ii) maintains or has maintained for him a dwelling place in British India for a period or periods amounting in all to one hundred and eighty-two days or more in that year, and is in British India for any time in that year ; or

(iii) having within the four years preceding that year been in British India for a period of or for periods amounting in all to three hundred and sixty-five days or more, is in British India for any time in that year otherwise than on an occasional or casual visit ;

(b) a Hindu undivided family, firm or other association of persons is resident in British India unless the control and management of its affairs is situated wholly without British India ; and

(c) a company is resident in British India in any year (a) if the control and management of its affairs is situated wholly in British India in that year, or (b) if its income arising in British India in that year exceeds its income arising without British India in that year.

Ordinary residence.

4-B. *For the purposes of this Act—*

(a) an individual is 'not ordinarily resident' in British India in any year if he has not been resident in British India in nine out of the ten years preceding that year or if he has not during the seven years preceding that year been in British India for a period of, or for periods amounting in all to, more than two years ;

(b) a Hindu undivided family is deemed to be ordinarily resident in British India if its manager is ordinarily resident in British India ;

(c) a company, firm or other association of persons is ordinarily resident in British India if it is resident in British India.

CHAPTER II

INCOME-TAX AUTHORITIES

Income-tax authorities.

5. (*1*) There shall be the following classes of Income-tax authorities for the purposes of this Act, namely :—

(*a*) the Central Board of Revenue,

(*b*) Commissioners of Income-tax,

(*c*) Assistant Commissioners of Income-tax *who may be either Appellate Assistant Commissioners of Income-tax or Inspecting Assistant Commissioners of Income-tax,*

(*d*) Income-tax Officers.

(*2*) The Central Government may appoint a Commissioner of Income-tax for any area specified in the order of appointment, *and may appoint Commissioners of Income-tax, not more than three in all, each to discharge, without reference to area, and to the exclusion of any Commissioner appointed for any area, the functions of a Commissioner in respect of any cases or classes of cases assigned to him by the Central Board of Revenue.*

(*3*) The Central Government may appoint for any area as many Appellate or Inspecting Assistant Commissioners of Income-tax and Income-tax Officers as it thinks fit.

(4) Appellate Assistant Commissioners of Income-tax shall be under the direct control of the Central Board of Revenue and shall perform their functions in respect of such persons or classes of persons and of such incomes or classes of income and in respect of such areas as the Central Board of Revenue may direct, and, where two or more Appellate Assistant Commissioners have been appointed for the same area, in accordance with any orders which the Central Board of Revenue may make for the distribution and allocation of the work to be performed.

(5) Inspecting Assistant Commissioners of Income-tax and Income-tax Officers shall perform their functions in respect of such persons or classes of persons and of such incomes or classes of income and in respect of such areas as the Commissioner of Income-tax may direct, and, where two or more Inspecting Assistant Commissioners of Income-tax or Income-tax Officers have been appointed for the same area, in accordance with any orders which the Commissioner of Income-tax may make for the distribution and allocation of the work to be

performed. The Commissioner may, with the previous approval of the Central Board of Revenue, by general or special order in writing, direct that the powers conferred on the Income-tax Officer and the Appellate Assistant Commissioner by or under this Act shall, in respect of any specified case or class of cases, be exercised by the Inspecting Assistant Commissioner and the Commissioner, respectively, and, for the purposes of any case in respect of which such order applies, references in this Act or in any rules made hereunder to the Income-tax Officer and the Appellate Assistant Commissioner shall be deemed to be references to the Inspecting Assistant Commissioner and the Commissioner, respectively.

(*6*) The Central Board of Revenue may, by notification in the official Gazette, *empower* Commissioners of Income-tax, *Appellate or Inspecting* Assistant Commissioners of Income-tax and Income-tax Officers to perform such functions in respect of such classes of persons or such classes of income and for such area as may be specified in the notification, and thereupon the functions so specified shall cease within the specified area to be performed in respect of the specified classes of persons or classes of income by the other authorities appointed under sub-sections (*2*) and (*3*).

(*7*) Assistant Commissioners of Income-tax and Income-tax Officers shall, for the purposes of this Act, be subordinate to the Commissioner of Income-tax for the area in which they perform their functions, *or where they perform functions assigned to them by a Commissioner of Income-tax appointed without reference to area, to that Commissioner.*

(8) All officers and persons employed in the execution of this Act shall observe and follow the orders, instructions and directions of the Central Board of Revenue :

Provided that no such orders, instructions or directions shall be given so as to interfere with the discretion of the Appellate Assistant Commissioner in the exercise of his appellate functions.

The Appellate Tribunal.

*[**5-A.** (*1*) The Central Government shall appoint an Appellate Tribunal consisting of not more than ten persons to exercise the functions conferred on the Appellate Tribunal by this Act.

* This section will come into force on a date to be notified by the Central Government later on but within two years from the 1st April, 1939 (*see* f.n. p. 221).

(2) The Appellate Tribunal shall consist of an equal number of judicial members and accountant members as hereinafter defined.

(3) A judicial member shall be a person who has exercised the powers of a District Judge or who possesses such qualifications as are normally required for appointment to the post of District Judge; and an accountant member shall be a person who has, for a period of not less than six years, practised professionally as a Registered Accountant enrolled on the Register of Accountants maintained by the Central Government under the Auditors Certificate Rules, 1932:

Provided that the Central Government may appoint as an accountant member of the Tribunal any person not possessing the qualifications required by this sub-section, if it is satisfied that he has qualifications and has had adequate experience of a character which render him suitable for appointment to the Tribunal.

(4) The Central Government shall appoint a judicial member of the Tribunal to be president thereof.

(5) The powers and functions of the Appellate Tribunal may be exercised and discharged by Benches constituted from members of the Tribunal by the president of the Tribunal.

(6) A Bench shall consist of not less than two members of the Tribunal, and shall be constituted so as to contain an equal number of judicial members and accountant members, or so that the number of members of one class does not exceed the number of members of the other class by more than one.

(7) If the members of a Bench differ in opinion on any point the point shall be decided according to the opinion of the majority, if there is a majority; but if the members are equally divided, they shall state the point or points on which they differ, and the case shall be referred by the president of the Tribunal for hearing on such point or points by one or more of the other members of the Tribunal, and such point or points shall be decided according to the opinion of the majority of the members of the Tribunal who have heard the case, including those who first heard it.

(8) Subject to the provisions of this Act, the Appellate Tribunal shall have power to regulate its own procedure, and the procedure of Benches of the Tribunal in all matters arising out of the discharge of its functions, including the place at which the Benches shall hold their sittings.]

CHAPTER III

TAXABLE INCOME

6. Save as otherwise provided by this Act, the following heads of income, profits and gains, shall be chargeable to income-tax in the manner hereinafter appearing, namely :—

Heads of income chargeable to income-tax.

(*i*) Salaries.
(*ii*) Interest on securities.
(*iii*) *Income from* property.
(*iv*) *Profits and gains of business, profession* or *vocation.*
(*v*) *Income from* other sources.

7. (*1*) The tax shall be payable by an assessee under the head "Salaries" in respect of any salary or wages, any annuity, pension or gratuity, and any fees, commissions, perquisites or profits * * * in lieu of, or in addition to, any salary or wages, *which are due to him from, whether paid or not, or are paid by or on behalf of, the Crown,* a local authority, a company, or any other public body or association, or *any private employer ; and for the purposes of this sub-section advances by way of loan or otherwise of income chargeable under this head shall be deemed to be salary due on the date when the advance is received :*

Salaries.

Provided that the tax shall not be payable in respect of any sum which the assessee by the conditions of his employment is required to spend out of his remuneration wholly, necessarily and exclusively in the performance of his duties.

Provided *further* that the tax shall not be payable in respect of any sum deducted from the salary payable by or on behalf of the Crown to any individual, being a sum deducted in accordance with the conditions of his service, for the purpose of securing to him a deferred annuity or of making provision for his wife or children, provided that the sum so deducted shall not exceed one-sixth of the salary.

Provided further that where tax is deductible at the source under section 18, the assessee shall not be called upon to pay the tax himself unless he has received the salary without such deduction ;

Explanation (*1*).—The right of a person to occupy free of rent as a place of residence any premises provided by his employer is a perquisite for the purposes of this sub-section.

Explanation (*2*).—*A payment due to or received by an assessee from an employer or former employer or from a*

provident or other fund at or in connection with the termination of his employment, whether or not the employment is then terminated or to be terminated, is to the extent to which it does not consist of contributions by the assessee or interest on such contributions a profit received in lieu of salary for the purpose of this sub-section, unless the payment is made solely as compensation for loss of employment and not by way of remuneration for past services :

Provided that nothing herein contained shall render liable to income-tax any payment from a provident fund to which the Provident Funds Act, 1925, applies, or any payment from a recognised provident fund within the meaning of Chapter IX-A, if such payment is exempted from payment of income-tax under the provisions of Chapter IX-A, or any payment from an approved superannuation fund within the meaning of Chapter IX-B made on the death of a beneficiary or in lieu of or in commutation of an annuity, or by way of refund of contributions on the death of a beneficiary or on his leaving the employment in connection with which the fund is established.

(2) Any income which would be chargeable under this head if paid in British India shall be deemed to be so chargeable if paid to a British subject or any servant of His Majesty in any part of India by or on behalf of the Crown or by a local authority established in the exercise of the powers of the Crown Representative or the Central Government in that behalf.

Interest on securities.

8. The tax shall be payable by an assessee under the head "Interest on securities" in respect of the interest receivable by him on any security of the Central Government or of a Provincial Government, or on debentures or other securities for money issued by or on behalf of a local authority or a company :

Provided that no income-tax shall be payable under this section by the assessee in respect of any sum deducted from such interest by way of commission by a banker realizing such interest on behalf of the assessee, *or in respect of any interest payable on money borrowed for the purpose of investment in the securities by the assessee except interest chargeable under this Act which is payable without British India, not being interest on a loan issued for public subscription before the 1st day of April, 1938, unless in respect of interest which is so chargeable tax has been paid or deducted under section 18, or unless there is a person in British India who may be appointed an agent under section 43 in respect of such interest ;*

Provided further that no income-tax shall be payable on the interest receivable on any security of the Central Government issued or declared to be income-tax free ;

Provided further that the income-tax payable on the interest receivable on any security of a Provincial Government issued income-tax free shall be payable by that Provincial Government.

9. (*1*) The tax shall be payable by an assessee *under the head 'Income from Property'* in respect of the *bona fide* annual value of property consisting of any buildings or lands appurtenant thereto of which he is the owner, other than such portions of such property as he may occupy for the purposes of *any business, profession or vocation carried on by him the profits of which are assessable to tax* subject to the following allowances, namely :—

Property.

(*i*) where the property is in the occupation of the owner, or where it is let to a tenant and the owner has undertaken to bear the cost of repairs, a sum equal to one-sixth of such value ;

(*ii*) where the property is in the occupation of a tenant who has undertaken to bear the cost of repairs, the difference between such value and the rent paid by the tenant up to but not exceeding one-sixth of such value ;

(*iii*) the amount of any annual premium paid to insure the property against risk of damage or destruction ;

(*iv*) where the property is subject to a mortgage or other capital charge, the amount of any interest on such mortgage or charge ; *where the property is subject to an annual charge not being a capital charge, the amount of such charge ;* where the property is subject to a ground rent, the amount of such ground rent ; and where the property has been acquired, *constructed, repaired, renewed or reconstructed* with borrowed capital, the amount of any interest payable on such capital :

Provided that no allowance shall be made in respect of any interest or annual charge payable without British India and chargeable under this Act, not being interest on a loan issued for public subscription before the 1st day of April, 1938, except interest or a charge on which tax has been paid or from which tax has been deducted under section 18 or in respect of which there is an agent for the payee in British India who may be assessed under section 43 ;

(*v*) any sums paid on account of land-revenue in respect of the property ;

(*vi*) in respect of collection charges, a sum not exceeding the prescribed maximum ;

(*vii*) in respect of vacancies, *that part of the net annual value, after deducting the foregoing allowances, which is proportional to the period during which the property is wholly unoccupied or, where the property is let out in parts, that portion of the net annual value, after deducting the foregoing allowances appropriate to any vacant part, which is proportional to the period during which such part is wholly unoccupied;*

[1] * * * *

(2) For the purposes of this section, the expression "annual value" shall be deemed to mean the sum for which the property might reasonably be expected to let from year to year :

Provided that, where the property is in the occupation of the owner for the purposes of his own residence, such sum shall, for the purposes of this section, be deemed not to exceed ten per cent of the total income of the owner.

(3) *Where property is owned by two or more persons and their respective shares are definite and ascertainable, such persons shall not in respect of such property be assessed as an association of persons, but the share of each such person in the income from the property as computed in accordance with this section shall be included in his total income.*

Business.

10. (1) The tax shall be payable by an assessee under the head *"Profits and gains of business, profession or vocation"* in respect of the profits or gains of any *business, profession or vocation* carried on by him.

(2) Such profits or gains shall be computed after making the following allowances, namely :—

(*i*) any rent paid for the premises in which such business, *profession or vocation* is carried on, provided that when any substantial part of the premises is used as a dwelling-house by the assessee, the allowance under this clause shall be such sum as the Income-tax Officer may determine having regard to the proportional *annual value of the* part so used ;

(*ii*) in respect of repairs, where the assessee is the tenant only of the premises, and has undertaken to bear the cost of such repairs, the amount paid on account thereof, provided that, if any substantial part of the premises is used by the

[1] The proviso was omitted by the Income-tax (Amendment) Act VII of 1939.

assessee as a dwelling-house, a proportional part only of such amount shall be allowed ;

(*iii*) in respect of capital borrowed for the purposes of the *business, profession or vocation,* the amount of the interest paid ;

Provided that no allowance shall be made under this clause in any case for any interest chargeable under this Act which is payable without British India, not being interest on a loan issued for public subscription before the 1st day of April, 1938, except interest on which tax has been paid or from which tax has been deducted under section 18 or in respect of which there is an agent in British India who may be assessed under section 43 or, in the case of a firm, for any interest paid to a partner of the firm ;

Explanation.—Recurring subscriptions paid periodically by shareholders or subscribers in such Mutual Benefit Societies as may be prescribed, shall be deemed to be capital borrowed within the meaning of this clause :

(*iv*) in respect of insurance against risk of damage or destruction of buildings, machinery, plant, furniture, stocks or stores, used for the purposes of the business, *profession or vocation,* the amount of any premium paid ;

(*v*) in respect of current repairs to such buildings, machinery, plant or furniture, the amount paid on account thereof ;

(*vi*) in respect of depreciation of such buildings, machinery, plant, or furniture being the property of the assessee, a sum equivalent to such percentage on the original cost *thereof to the assessee* as may in any case or class of cases be prescribed :

Provided that—

(*a*) the prescribed particulars have been duly furnished ;

(*b*) where full effect cannot be given to any such

* (*vi*) in respect of depreciation of such buildings, machinery, plant, or furniture being the property of the assessee, a sum equivalent to such percentage on the *written down value thereof* as may in any case or class of cases be prescribed :

Provided that—

(*a*) the prescribed particulars have been duly furnished ;

(*b*) where full effect cannot be given to any such

* Amended clauses (*vi*) and (*vii*) shall not take effect earlier than the 1st day of April, 1940. Till then the corresponding clauses on the left hand side shall remain in force.

allowance in any year owing to there being no profits or gains chargeable for that year, or owing to the profits or gains chargeable being less than the allowance, the allowance or part of the allowance to which effect has not been given, as the case may be, shall be added to the amount of the allowance for depreciation for the following year and deemed to be part of that allowance, or if there is no such allowance for that year, be deemed to be the allowance for that year, and so on for succeeding years ; and

(*c*) the aggregate of all such allowances made under this Act or any Act repealed hereby, or under the Indian Income-tax Act, 1886, shall, in no case, exceed the original cost to the assessee of the buildings, machinery, plant, or furniture as the case may be ;

(*vii*) in respect of any machinery or plant which, in consequence of its having become obsolete, has been sold or discarded, the difference between the original cost to the assessee of the machinery or plant as reduced by the aggregate of the allowances made in respect of depreciation under clause (*vi*), or any Act repealed hereby, or the

allowance in any year *not being a year which ended prior to the 1st day of April, 1939*, owing to there being no profits or gains chargeable for that year, or owing to the profits or gains chargeable being less than the allowance, the allowance or part of the allowance to which effect has not been given, as the case may be, shall be added to the amount of the allowance for depreciation for the following year and deemed to be part of that allowance, or, if there is no such allowance for that year, be deemed to be the allowance for that year, and so on for succeeding years ; and

(*c*) the aggregate of all such allowances made under this Act or any Act repealed hereby, or under the Indian Income-tax Act, 1886, shall, in no case, exceed the original cost to the assessee of the buildings, machinery, plant, or furniture as the case may be ;

* *(vii) in respect of any machinery or plant which has been sold or discarded, the amount by which the written down value of the machinery or plant exceeds the amount for which the machinery or plant is actually sold or its scrap value :*

Provided that such amount is actually written off in the books of the assessee :

[1] See footnote at p. 237.

Indian Income-tax Act, 1886, and the amount for which the machinery or plant is actually sold, or its scrap value.

Provided further that where the amount for which any such machinery or plant is sold exceeds the written down value, the excess shall be deemed to be profits of the previous year in which the sale took place ;

(*viii*) in respect of animals which have been used for the purposes of the business, *profession or vocation* otherwise than as stock-in-trade and have died or become permanently useless for such purposes, the difference between the original cost to the assessee of the animals and the amount, if any, realised in respect of the carcasses or animals ;

(*ix*) any sums paid on account of land-revenue, local rates or municipal taxes in respect of such part of the premises as is used for the purposes of the business, *profession or vocation ;*

(*x*) any sum paid to an employee as bonus or commission for services rendered, where such sum would not have been payable to him as profits or dividend if it had not been paid as bonus or commission :

Provided that the amount of the bonus or commission is of a reasonable amount with reference to—

(*a*) the pay of the employee and the conditions of his service ;

(*b*) the profits of the business, *profession or vocation* for the year in question ; and

(*c*) the general practice in similar businesses *professions or vocations ;*

(xi) when the assessee's accounts in respect of any part of his business, profession or vocation are not kept on the cash basis, such sum, in respect of bad and doubtful debts, due to the assessee in respect of that part of his business, profession or vocation, and in the case of an assessee carrying on a banking or money-lending business, such sum in respect of loans made in the ordinary course of such business as the Income-tax Officer may estimate to be irrecoverable but not exceeding the amount actually written off as irrecoverable in the books of the assessee :

Provided that if the amount ultimately recovered on any such debt or loan is greater than the difference between the whole debt or loan and the amount so allowed, the excess shall be deemed to be a profit of the year in which it is

recovered, and if less, the deficiency shall be deemed to be a business expense of that year ;

(*xii*) any expenditure (not being in the nature of capital expenditure *or personal expenses of the assessee) laid out or expended wholly and exclusively for the purpose of such business, profession or vocation ;*

[1] * * * *

(3) *Where any building, machinery, plant or furniture in respect of which any allowance is due under clause (iv), clause (v), clause (vi) or clause (vii) of sub-section (2) is not wholly used for the purposes of the business, profession or vocation, the allowance shall be restricted to the fair proportional part of the amount which would be allowable if such building, machinery, plant or furniture was wholly so used.*

(4) *Nothing in clause (ix) or clause (xii) of sub-section (2) shall be deemed to authorise the allowance of any sum paid on account of any cess, rate or tax levied on the profits or gains of any business, profession or vocation or assessed at a proportion of or otherwise on the basis of any such profits or gains ; and nothing in clause (xii) of sub-section (2) shall be deemed to authorise—*

(a) any allowance in respect of a payment which is chargeable under the head 'Salaries' if it is payable without British India and tax has not been paid thereon nor deducted therefrom under section 18 ; or

(b) any allowance in respect of any payment by way of interest, salary, commission or remuneration made by a firm to any partner of the firm ; or

(c) any allowance in respect of a payment to a provident or other fund established for the benefit of employees unless the employer has made effective arrangements to secure that tax shall be deducted at source from any payments made from the fund which are taxable under the head 'Salaries'.

(5) In sub-section (2), 'paid' means actually paid or incurred according to the method of accounting upon the basis of which the profits or gains are computed under this section ; *'plant' includes vehicles, books, scientific apparatus and surgical equipment purchased for the purposes of the business, profession or vocation ; and 'written down value' means—*

(a) in the case of assets acquired in the previous year, the actual cost to the assessee ;

[1] The proviso was omitted by the Income-tax (Amendment) Act VII of 1939.

(b) in the case of assets acquired before the previous year but after the commencement of the Indian Income-tax (Amendment) Act, 1939, the actual cost to the assessee less all depreciation allowable to him under this section ;

(c) in the case of assets acquired before the commencement of the Indian Income-tax (Amendment) Act, 1939, the actual cost to the assessee less for each financial year since acquisition the amount of depreciation applicable to the assets at the rates in force for each such year since the 1st day of April, 1922, and at the rates in force on the 1st day of April, 1922, for each such year prior to that date :

Provided that where the provisions of the proviso to sub-section (2) of section 26 are applicable, the actual cost to the assessee referred to in clauses (a), (b) and (c) shall be the actual cost to the person succeeded in the business, profession or vocation :

Provided further that there shall not be so deducted from the actual cost any depreciation allowance or part of any depreciation allowance which was due for a year which ended prior to the 1st day of April, 1939, but to which full effect was not given owing to the absence of profits or gains chargeable for that year, or owing to the profits or gains so chargeable being less than the allowance.

(6) A trade, professional or similar association performing specific services for its members for remuneration definitely related to those services shall be deemed for the purpose of this section to carry on business in respect of those services, and the profits and gains therefrom shall be liable to tax accordingly.

(7) Notwithstanding anything to the contrary contained in section 8, 9, 10, 12 or 18, the profits and gains of any business of insurance and the tax payable thereon shall be computed in accordance with the rules contained in the Schedule to this Act.

11. *Professional earnings. [Omitted by the Income-tax (Am.) Act of 1939].*

12. (1) The tax shall be payable by an assessee under the head *"Income from other sources"* in respect of income, profits and gains of every kind *which may be included in his total income* (if not included under any of the preceding heads).

Other sources.

(2) Such income, profits and gains shall be computed after making allowance for any expenditure (not being in the nature of capital expenditure) incurred solely for the purpose of

making or earning such income, profits or gains, *provided that no allowance shall be made on account of*—

(*a*) any personal expenses of the assessee, or

(b) any interest chargeable under this Act which is payable without British India, not being interest on a loan issued for public subscription before the 1st day of April, 1938, or not being interest on which tax has been paid or from which tax has been deducted under section 18, or

(c) any payment which is chargeable under the head 'Salaries', if it is payable without British India and tax has not been paid thereon nor deducted therefrom under section 18 ;

(3) Where an assessee lets on hire machinery, plant or furniture belonging to him, he shall be entitled to allowances in accordance with the provisions of clauses (iv), (v), (vi) and (vii) of sub-section (2) of section 10.

Managing Agency Commission.

12A. *Where a managing agent of a company is liable under an agreement made for adequate consideration to share managing agency commission with a third party or parties, the said agent and the said party or parties shall file a declaration showing the proportion in which such commission is shared between them, and on proof to the satisfaction of the Income-tax Officer of the facts contained in such declaration such agent and each such party shall be chargeable only on the share to which such agent or party is entitled under the agreement.*

Method of accounting.

13. Income, profits and gains shall be computed, for the purposes of sections 10,* and 12, in accordance with the method of accounting regularly employed by the assessee:

Provided that, if no method of accounting has been regularly employed, or if the method employed is such that, in the opinion of the Income-tax Officer, the income, profits and gains cannot properly be deduced therefrom, then the computation shall be made upon such basis and in such manner as the Income-tax Officer may determine.

Exemptions of a general nature.

14. (*1*) The tax shall not be payable by an assessee in respect of any sum which he receives as a member of a Hindu undivided family.

* The figures "11" were omitted by the Income-tax (Amendment) Act VII of 1939.

(2) The tax shall not be payable by an assessee—

(a) if a partner of an unregistered firm, in respect of any portion of his share in the profits and gains of the firm computed in the manner laid down in clause (b) of sub-section (1) of section 16 on which the tax has already been paid by the firm ; or

(b) if a member of an association of persons other than a Hindu undivided family, a company or a firm, in respect of any portion of the amount which he is entitled to receive from the association on which the tax has already been paid by the association.

Exemption in the case of life insurances.

15. (1) The tax shall not be payable in respect of any sums paid by an assessee to effect an insurance on the life of the assessee or on the life of a wife or husband of the assessee or in respect of a contract for a deferred annuity on the life of the assessee or on the life of a wife or husband of the assessee, or as a contribution to any Provident Fund to which the Provident Funds Act, 1925, applies* * * *.

(2) Where the assessee is a Hindu undivided family, there shall be exempted under sub-section (1) any sums paid to effect an insurance on the life of any male member of the family or of the wife of any such member.

(3) The aggregate of any sums exempted under this section shall not, together with any sums exempted under the *second proviso* to sub-section (1) of section 7, and any sums exempted under sub-section (1) of section 58-F, exceed in the case of an individual, one-sixth of the total income of the assessee, *or six thousand rupees, whichever is less, and in the case of a Hindu undivided family, one-sixth of the total income of the assessee, or twelve thousand rupees, whichever is less ;*

Exemptions and exclusions determining the total income.

16. (1) In computing the total income of an assessee—

(a) any sums exempted under the *second proviso* to sub-section (1) of section 7, the second and third provisos to section 8, sub-section (2) of section 14 and section 15 shall be included ;

(b) when the assessee is a partner of a firm, then, whether the firm has made a profit or a loss, his share (whether a net profit or a net loss) shall be taken to be any salary, interest, commission or other remuneration payable to him by the firm in

* Words omitted by the Income-tax (Amendment) Act, 7 of 1939.

respect of the previous year increased or decreased respectively by his share in the balance of the profit or loss of the firm after the deduction of any interest, salary, commission or other remuneration payable to any partner in respect of the previous year:

Provided that if his share so computed is a loss, such loss may be set off or carried forward and set off in accordance with the provisions of section 24 ;

(*c*) *all income arising to any person by virtue of a settlement or disposition whether revocable or not, and whether effected before or after the commencement of the Indian Income-tax (Amendment) Act, 1939, from assets remaining the property of the settlor or disponer, shall be deemed to be income of the settlor or disponer, and all income arising to any person by virtue of a revocable transfer of assets shall be deemed to be income of the transferor :*

Provided that for the purposes of this clause a settlement, disposition or transfer shall be deemed to be revocable if it contains any provision for the retransfer directly or indirectly of the income or assets to the settlor, disponer or transferor, or in any way gives the settlor, disponer or transferor, a right to reassume power directly or indirectly over the income or assets :

Provided further that the expression 'settlement or disposition' shall for the purposes of this clause include any disposition, trust, covenant, agreement, or arrangement, and the expression 'settlor or disponer' in relation to a settlement or disposition shall include any person by whom the settlement or disposition was made ;

Provided further that this clause shall not apply to any income arising to any person by virtue of a settlement or disposition which is not revocable for a period exceeding six years or during the lifetime of the person and from which income the settlor or disponer derives no direct or indirect benefit but that the settlor shall be liable to be assessed on the said income as and when the power to revoke arises to him.

(2) *For the purposes of inclusion in the total income of an assessee any dividend shall be deemed to be income of the previous year in which it is paid, credited or distributed or deemed to have been paid, credited or distributed to him, and shall be increased by the amount of income-tax (but not super-tax) payable thereon calculated at the rate applicable to the total income of a company for the financial year in which*

dividend is paid, credited or distributed or deemed to have been paid, credited or distributed :

Provided that when any portion of the profits and gains of the company out of which such divided has been paid, credited or distributed or deemed to have been paid, credited or distributed was not liable to income-tax in the hands of the company, the income-tax to be added under this section shall be calculated upon only such proportion of the dividend as the amount of the profits and gains of the company liable to income-tax bears to the total profits and gains of the company.

(3) In computing the total income of any individual for the purpose of assessment, there shall be included—

(a) so much of the income of wife or minor child of such individual as arises directly or indirectly—

(i) from the membership of the wife in a firm of which her husband is a partner ;

(ii) from the admission of the minor to the benefits of partnership in a firm of which such individual is a partner ;

(iii) from assets transferred directly or indirectly to the wife by the husband otherwise than for adequate consideration or in connection with an agreement to live apart ; or

(iv) from assets transferred directly or indirectly to the minor child, not being a married daughter, by such individual *otherwise than for adequate consideration* ; and

(b) so much of the income of any *person or association of persons*[1] * * * as arises from assets transferred *otherwise than for adequate consideration to the person or association* by such individual *for the benefit of his wife or a minor child or both.*

Determination of tax payable in certain special cases.

17. (1) *Where a person is not resident in British India, and is a British subject as defined in section 17 of the British Nationality and Status of Aliens Act, 1914, or a subject of a State in India or Burma, the tax, including super-tax, payable by him or on his behalf on his total income shall be an amount bearing to the total amount of the tax including super-tax which would have been payable on his total world income had it been his total income the same pro-*

[1] The words "consisting of such individual and his wife" were omitted by the Income-tax (Am.) Act, 7 of 1939.

portion as his total income bears to his total world income; and in the case of any other non-resident person, the income-tax payable by him or on his behalf on his total income shall be at the maximum rate and the super-tax payable thereon shall be an amount bearing to the total amount of super-tax which would have been payable on his total world income had it been his total income the same proportion as his total income bears to his total world income.

(2) Where there is included in the total income of any assessee any income (including income from a share in an unregistered firm, if assessed as such) exempted from tax by or under the provisions of this Act, the income-tax excluding super-tax payable by the assessee shall be an amount bearing to the total amount of the income-tax excluding super-tax which would have been payable on the total income had no part of it been exempted the same proportion as the unexempted portion of the total income bears to the total income.

CHAPTER IV

Deductions and Assessment

Payment by deduction at source.

18. (1) *[*Omitted by Act XVIII of 1933*]*.

(2) Any person responsible for paying any income chargeable under the head "Salaries" shall, at the time of payment, deduct income-tax *and super-tax* on the amount payable *at a rate representing the average of the rates applicable to the estimated total income of the assessee under this head:*

Provided that such person may, at the time of making any deduction, increase or reduce the amount to be deducted under this sub-section for the purpose of adjusting any excess or deficiency arising out of any previous deduction or failure to deduct.

(2-*A*) Notwithstanding anything hereinbefore contained for the purpose of making the deduction under sub-section (2), there shall be included in the amount payable any income chargeable under the head 'Salaries' which is payable to the assessee out of India by or on behalf of the Crown, and the value in rupees of such income shall be calculated at the prescribed rate of exchange.

(2-B) *Any person responsible for paying any income chargeable under the head 'Salaries' to a person not resident in British India shall at the time of payment deduct income-tax at the maximum rate and also super-tax at the rate or rates applicable to the estimated income of the assessee under this head.*

(3) The person responsible for paying any income chargeable under the head "Interest on securities" shall, unless otherwise prescribed in the case of any security of the Central Government, at the time of payment, deduct income-tax but not super-tax on the amount of the interest payable at the maximum rate.

Provided that where the Income-tax Officer gives a certificate in writing (which certificate he shall give in everv proper case on the application of the assessee) that to the best of his belief the total income *or the total world income* of a recipient will be less than the minimum liable to income-tax or will be liable to a rate of income-tax less than the maximum rate, the person responsible for paying any income *referred to in this sub-section or in sub-section (2B), as the case may be* to such recipient shall, until such certificate is cancelled by the Income-tax Officer, pay the income without deduction or deduct the tax at such less rate, as the case may be.

(3-A) *Any person responsible for paying to a person not resident in British India any interest not being 'Interest on Securities', or any other sum chargeable under the provisions of this Act, shall, at the time of payment, unless he is himself liable to pay income-tax thereon as an agent, deduct income-tax at the maximum rate.*

(3-B) Where the Income-tax Officer has reason to believe that the *total world income* of any person residing out of British India to whom any interest not being 'Interest on Securities' *or any other sum chargeable under this Act* is payable, will in any year exceed the maximum amount which is not chargeable with super-tax under the law for the time being in force, he may by order in writing, require the person responsbile for *making such payments* to such person to deduct at the time of payment [1]. * * * super-tax at the rates determined by the Income-tax Officer to be applicable to the *total world income* of such person in that year.

(3-C) Where the person responsible for paying any interest not being 'Interest on Securities' *or any other sum chargeable*

[1] The words "income-tax and" were omitted by the Income-tax (Amd.) Act 7 of 1939.

under this Act to any person *makes to that person in any year payments* exceeding in the aggregate the maximum amount which is not chargeable with super-tax under the law for the time being in force, the person responsible for *making such payments* shall if he has not reason to believe that the recipient is resident in British India and no order under sub-section (*3B*) has been received in respect of such recipient, deduct at the time of payment[1] * * * super-tax on the amount by which *the total amount of such payments* exceeds the maximum amount not chargeable with super-tax at the rate applicable to such excess.

(*3-D*) Where the Income-tax Officer has reason to believe that any person, who is a shareholder in a company, is resident out of British India and that the *total world income* of such person will in any year exceed the maximum amount which is not chargeable to super-tax under the law for the time being in force, he may, by order in writing, require the principal officer of the company to deduct at the time of payment of any dividend from the company to the shareholder in that year super-tax at such rate as the Income-tax Officer may determine as being the rate applicable in respect of the income of the shareholder in that year.

(*3-E*) If in any year the amount of any dividend or the aggregate amount of any dividends paid to any shareholder by a company (together with the amount of any income-tax payable by the company in respect thereof) exceeds the maximum amount of the total income of a person which is not chargeable to super-tax under the law for the time being in force, and the principal officer of the company has no reason to believe that the shareholder is resident in British India, and no order under sub-section (*3-D*) has been received in respect of such shareholder by the principal officer from the Income-tax Officer, the principal officer shall at the time of payment deduct super-tax on the amount of such excess at rate which would be applicable under the law for the time being in force if the amount of such dividend or dividends (together with the amount of such income-tax as aforesaid) constituted the whole total income of the shareholder.

(*4*) All sums deducted in accordance with the provisions of this section shall, for the purpose of computing the income of an assessee, be deemed to be income received.

[1] The words "income-tax on the total amount of such interest at the rate appropriate to such total, and" have been omitted by the Income-tax (Amendment) Act 7 of 1939.

(5) Any deduction made in accordance with the provisions of this section *and any sum by which a dividend has been increased under sub-section (2) of section 16* shall be treated as a payment of income-tax or super-tax on behalf of the person from whose income the deduction was made, or of the owner of the security *or of the shareholder*, as the case may be, and credit shall be given to him therefor in the assessment, if any, made for the following year under this Act:

Provided that, if such person or such owner obtains, in accordance with the provisions of this Act, a refund of any portion of the tax so deducted, no credit shall be given for the amount of such refund.

Provided further that where such person or owner is a person whose income is included under the provisions of *clause (c) of sub-section (1) or* sub-section (3) of section *16, section 44-D, or section 44-E* in the total income of another person such other person shall be deemed to be the person or owner on whose behalf payment has been made and to whom credit shall be given in the assessment for the following year.

(6) All sums deducted in accordance with the provisions of this section shall be paid within the prescribed time by the person making the deduction to the credit of the Central Government or as the Central Board of Revenue directs.

(7) If any such person does not deduct *or after deducting fails to pay* the tax as required by or under this section, he, *and in the cases specified in sub-sections (3-D) and (3-E) the company of which he is the principal officer* shall, without prejudice to any other consequences which *he or it* may incur be deemed to be an assessee in default in respect of the tax:

Provided that the Income-tax Officer shall not make a direction under sub-section (1) of section 46 for the recovery of any penalty from such person unless satisfied that such person has wilfully failed to deduct and pay the tax.

(8) The power to levy by deduction under this section shall be without prejudice to any other mode of recovery.

(9) Every person deducting income-tax or super-tax in accordance with the provisions of sub-sections (3), (3-*A*), (3-*B*), (3-*C*), (3-*D*) *or* (3-*E*), shall, *at the time of payment of the sum from which tax has been deducted*, furnish to the person to whom such payment is made a certificate to the effect that income-tax or super-tax has been deducted, and specifying the amount so deducted, the rate at which the tax has been deducted, and such other particulars as may be prescribed.

19. *In the case of income in respect of which provision is not made under section 18 for deduction of income-tax at the time of payment, and in any case where income-tax has not been deducted in accordance with the provisions of section 18, income-tax shall be payable by the assessee direct.*

Payment in other cases.

19-A. The principal officer of every company shall, on or before the 15th day of June in each year, furnish to the prescribed officer a return in the prescribed form and verified in the prescribed manner of the names and of the addressees, as entered in the register of shareholders maintained by the company, of the shareholders to whom a dividend or aggregate dividends exceeding such amount as may be prescribed in this behalf has or have been distributed during the preceding year and of the amount so distributed to each such shareholder.

Supply of information regarding dividends.

20. The principal officer of every company shall, at the time of distribution of dividends, furnish to every person receiving a dividend a certificate to the effect that the company has paid or will pay income-tax on the profits which are being distributed, and specifying such other particulars as may be prescribed.

Certificate by company to shareholders receiving dividends.

20-A. The person responsible for paying any interest not being 'Interest on Securities' shall, on or before the fifteenth day of June in each year, furnish to the prescribed officer a return in the prescribed form and verified in the prescribed manner of the names and addresses of all persons to whom during the previous financial year he has paid interest or aggregate interest exceeding such amount not being less than [1]*four hundred* rupees as may be prescribed in this behalf, together with the amount paid to each such person.

Supply of information regarding interest.

21. The prescribed person in the case of every Government office, and the principal officer or the prescribed person in the case of every local authority, company or other public body or association, and every private employer shall prepare, and, within thirty days from the 31st day of March

Annual return.

[1] Substituted for "one thousand" in the old section by the Income-tax (Am.) Act 7 of 1939.

in each year, deliver or cause to be delivered to the Income-tax Officer in the prescribed form *and verified in the prescribed manner,* a return in writing showing—

(*a*) the name and, so far as it is known, the address of every person who was receiving on the said 31st day of March, or has received *or to whom was due* during the year ending on that date, from the authority, company, body, association or private employer, as the case may be, any income chargeable under the head "Salaries" of such amount as may be prescribed ;

(*b*) the amount of the income so received *or so due* by each such person, and the time or times at which the same was paid *or due, as the case may be;*

(*c*) The amount deducted in respect of income-tax *and super-tax* from the income of each such person.

Return of Income.

22. (1) *The Income-tax Officer shall, on or before the 1st day of May in each year, give notice, by publication in the press and by publication in the prescribed manner, requiring every person whose total income during the previous year exceeded the maximum amount which is not chargeable to income-tax to furnish, within such period not being less than sixty days as may be specified in the notice, a return, in the prescribed form and verified in the prescribed manner, setting forth (along with such other particulars as may be required by the notice) his total income and total world income during that year:*

Provided that the Income-tax Officer may in his discretion extend the date for the delivery of the return in the case of any person or class of persons ;

(2) In the case of any person[1] * * *whose total income is, in the Income-tax Officer's opinion, of such an amount as to render such person liable to income-tax, the Income-tax Officer *may serve* a notice upon him requiring him to furnish, within such period, not being less than thirty days, as may be specified in the notice, a return in the perscribed form and verified in the prescribed manner setting forth (along with such other particulars as may be provided for in the notice) his total income *and total world income* during the previous year.

Provided that the Income-tax Officer may in his discretion extend the date for the delivery of the return ;

[1] The words "other than a company" have been omitted by the Income-tax (Am.) Act, 7 of 1939.

(3) If any person has not furnished a return within the time allowed by or under sub-section (1) or sub-section (2), or having furnished a return under either of those sub-sections, discovers any omission or wrong statement therein, he may furnish a return or a revised return, as the case may be, at any time before the assessment is made.

(4) The Income-tax Officer may serve[1] * * * on any person *who has made a return under sub-section* (1) *or* upon whom a notice has been served under sub-section (2) a notice requiring him, on a date to be therein specified, to produce, or cause to be produced, such accounts or documents as the Income-tax Officer may require:

Provided that the Income-tax Officer shall not require the production of any accounts relating to a period more than three years prior to the previous year.

(5) The prescribed form of the returns referred to in sub-sections (1) and (2) shall, in the case of an assessee engaged in any business, profession or vocation, require him to furnish particulars of the location and style of the principal place wherein he carries on the business, profession or vocation and of any branches thereof, the names and addresses of his partners, if any, in such business, profession or vocation and the extent of the share of the assessee and the shares of all such partners in the profits of the business, profession or vocation and any branches thereof.

Assessment.

23. (1) If the Income-tax Officer is satisfied *without requiring the presence of the assessee or the produciton by him of any evidence* that a return made under section 22 is correct and complete, he shall assess the total income of the assessee, and shall determine the sum payable by him on the basis of such return.

(2) If the Income-tax Officer *is not satisfied without requiring the presence of the person who made the return* or *the production of evidence that a return made under section 22 is correct and complete,* he shall serve on such person, a notice requiring him, on a date to be therein specified, either to attend at the Income-tax Officer's office or to produce, or to cause to be there produced, any evidence on which such person may rely in support of the return.

[1] The words "on the principal officer of any company or" have been omitted by the Income-tax (Am.) Act, 7 of 1939.

(3) On the day specified in the notice issued under sub-section (2), or as soon afterwards as may be, the Income-tax Officer, after hearing such evidence as such person may produce and such other evidence as the Income-tax Officer may require, on specified points, shall, by an order in writing, assess the total income of the assessee, and determine the sum payable by him on the basis of such assessment.

(4) *If any person fails to make the return required by any notice given under sub-section* (2) *of section* 22 *and has not made a return or a revised return under sub section* (3) *of the same section* or fails to comply with all the terms of a notice issued under sub-section (4) of the same section or, having made a return, fails to comply with all the terms of a notice issued under sub-section (2) of this section, the Income-tax Officer shall make the assessment to the best of his judgment and determine the sum payable by the assessee on the basis of such assessment and, in the case of a firm, may refuse to register it or may cancel its registration if it is already registered:

Provided that the registration of a firm shall not be cancelled until fourteen days have elapsed from the issue of a notice by the Income-tax Officer to the firm intimating his intention to cancel its registration.

(5) Notwithstanding anything contained in the foregoing sub-sections, when the assessee is a firm and the total income of the firm has been assessed under sub-section (1), sub-section (3) or sub-section (4), as the case may be,—

(a) in the case of a registered firm, the sum payable by the firm itself shall not be determined but the total income of each partner of the firm, including therein his share of its income, profits and gains of the previous year, shall be assessed and the sum payable by him on the basis of such assessment shall be determined:

Provided that if such share of any partner is a loss it shall be set off against his other income or carried forward and set off in accordance with the provisions of section 24 :

Provided further that when any of such partners is a person not resident in British India, his share of the income, profits and gains of the firm shall be assessed on the firm at the rates which would be applicable if it were assessed on him personally, and the sum so determined as payable shall be paid by the firm ; and

(b) in the case of an unregistered firm, the Income-tax Officer may instead of determining the sum payable by the firm itself proceed in the manner laid down in clause (a) as

applicable to a registered firm, if, in his opinion, the aggregate amount of the tax including super-tax, if any, payable by the partners under such procedure would be greater than the aggregate amount which would be payable by the firm and the partners individually if the firm were assessed as an unregistered firm.

Power to assess individual members of certain companies.

[1]**23-A.** *(1) Where the Income-tax Officer is satisfied that in respect of any previous year the profits and gains distributed as dividends by any company up to the end of the sixth month after its accounts for that previous year are laid before the company in general meeting increased by any income-tax payable thereon are less than sixty per cent. of the assessable income of the company of that previous year, he shall, unless he is satisfied that having regard to losses incurred by the company in earlier years or to the smallness of the profit made, the payment of a dividend or a larger dividend than that declared would be unreasonable, make with the previous approval of the Inspecting Assistant Commissioner an order in writing that the undistributed portion of the assessable income of the company of that previous year as computed for income-tax purposes shall be deemed to have been distributed as dividends amongst the shareholders as at the date of the general meeting aforesaid, and thereupon the proportionate share thereof of each shareholder shall be included in the total income of such shareholder for the purpose of assessing his total income:*

Provided that when the reserves representing accumulations of past profits which have not been the subject of an order under this sub-section exceed the paid up capital of the company, together with any loan capital which is the property of the shareholders, or the actual cost of the fixed assets of the company whichever of these is greater, this section shall apply as if instead of the words 'sixty per cent. of the assessable income' the words 'one hundred per cent. of the assessable income' were substituted:

Provided further that no order under this sub-section shall be made where the company has distributed not less than fifty-five per cent. of the assessable income of the company, unless the company, on receipt of a notice from the Income-tax Officer

[1] This section was inserted by s. 4 of the Income-tax (Am.) Act, 21 of 1930. The original sub-section was omitted by the Income-tax (Am.) Act, 7 of 1939.

that he proposes to make such an order, fails to make within three months of the receipt of such notice a further distribution of its profits and gains so that the total distribution made is not less than sixty per cent. of the assessable income of the company of the previous year concerned:

Provided further that this sub-section shall not apply to any company in which the public are substantially interested or to a subsidiary company of such a company if the whole of the share capital of such subsidiary company is held by the parent company or by the nominees thereof ;

Explanation.—For the purpose of this sub-section,—

[1] * * * *

[2] * a company shall be deemed to be a company in which the public are substantially interested if shares of the company (not being shares entitled to a fixed rate of dividend, whether with or without a further right to participate in profits) carrying not less than twenty-five per cent. of the voting power have been alloted unconditionally to, or acquired unconditionally by, and are at the end of the previous year beneficially held by, the public (not including a company to which the provisions of this sub-section apply), and if any such shares have in the course of such previous year been the subject of dealings in any stock exchange in British India or are in fact freely transferable by the holders to others members of the public :

[3] * * * *

(2) The *Inspecting* Assistant Commissioner shall not give his approval to any order proposed to be passed by the Income-tax Officer under this section until he has given the[4] * * company concerned an opportunity of being heard.

(3) (*i*) * * * [*Omitted by* the Income-tax (Amendment) Act 7 of 1939].

(3) (*ii*) Where the proportionate share of any member of a company in the undistributed profits and gains of the company has been included in his total income under the provisions of *sub-section* (*1*) the tax payable in respect thereof shall be recoverable from the company *if it cannot be recovered from such member.*

(*iii*) Where tax is recoverable from a company [4] * * under this sub-section, a notice of demand shall be served upon it in

[1] Clauses (*a*) was omitted by the Income-tax (Am.) Act, 7 of 1939.
[2] The brackets and letter "(*b*)" were omitted *ibid.*
[3] Clauses (*c*) and (*d*) were omitted, *ibid.*
[4] The words "firm, association or" were omitted *ibid.*

the prescribed form showing the sum so payable, and such company[1] * * * shall be deemed to be the assessee in respect of such sum, for the purpose of Chapter VI.

(4) Where tax has been paid in respect of any undistributed profits and gains of a company under this section, and such profits and gains are subsequently distributed in any year, the proportionate share therein of any member of the company shall be excluded in computing his total income of that year.

(5) When a company is a shareholder deemed under sub-section (1) to have received a dividend, the amount of the dividend thus deemed to have been paid to it shall be deemed to be part of its total income for the purpose also of the application of that sub-section to distributions of profits by that company.

Set-off of loss in computing aggregate income.

24. (1) Where any assessee sustains a loss of profits or gains in any year under any of the heads mentioned in section 6, he shall be entitled to have the amount of the loss set-off against his income, profits or gains under any other head in that year.

Provided that where the assessee is an unregistered firm which has not been assessed under the provisions of clause (b) of sub-section (5) of section 23 in the manner applicable to a registered firm, any such loss shall be set off only against the income, profits and gains of the firm and not against the income, profits and gains of any of the partners of the firm; and where the assessee is a registered firm, any loss which cannot be set off against other income, profits and gains of the firm shall be apportioned between the partners of the firm and they alone shall be entitled to have the amount of the loss set off under this section;

(2) Where any assessee sustains a loss of profits or gains in any year, being a previous year not earlier than the previous year for the assessment for the year ending on the 31st day of March, 1940, under the head 'Profits and gains of business, profession or vocation', and the loss cannot be wholly set off under sub-section (1), the portion not so set off shall be carried forward to the following year and set off against the profits and gains, if any, of the assessee from the same business, profession or vocation for that year; and if it cannot be wholly so set off, the amount of loss not so set off shall be carried forward to the following year, and so on; but no loss shall be so carried forward

[1] The words "firm or association" were omitted by the Income-tax (Am.) Act 7 of 1939.

for more than six years, and a loss arising in the previous years for the assessment for the years ending on the 31st day of March, 1940, the 31st day of March, 1941, the 31st day of March, 1942, the 31st day of March, 1943, and the 31st day of March, 1944, respectively, shall be carried forward only for one, two, three, four and five years, respectively :

Provided that nothing herein contained shall entitle any assessee, being a registered firm, to have carried forward and set off any loss which has been apportioned between the partners, under the proviso to sub-section (1), or entitle any assessee, being a partner in an unregistered firm which has not been assessed under the provisions of clause (b) of sub-section (5) of section 23 in the manner applicable to a registered firm, to have carried forward and set off against his own income any loss sustained by the firm :

Provided further that where an unregistered firm is assessed as a registered firm under clause (b) of sub-section (5) of section 23, during any year, its losses shall also be carried forward and set off under this section as if it were a registered firm:

Provided further that where a change has occurred in the constitution of a firm or where any person carrying on any business, profession or vocation has been succeeded in such capacity by another person, otherwise than by inheritance, nothing in this section shall be deemed to entitle any person other than the person incurring the loss to have it set off against his income, profits or gains.

(3) When, in the course of the assessment of the total income of any assessee, it is established that a loss of profits or gains has taken place which he is entitled to have set off under the provisions of this section, the Income-tax Officer shall notify to the assessee by order in writing the amount of the loss as computed by him for the purposes of this section.

Assessment in case of departure from British India.

24-A. (1) When it appears to the Income-tax Officer that any person may leave British India during the current financial year, or shortly after its expiry, and that he has no present intention of returning, the Income-tax Officer may proceed to assess him on his total income of the period from the expiry of the last previous year of which *the income has been assessed in his hands* to the probable date of his departure from British India, *or where he has not been previously assessed, on his total income of the period up to the probable date of his departure from British India. The assess-*

ment shall be made on the total income of each completed previous year included in such period at the rate at which such income would have been charged had it been fully assessed, and as respects the period from the expiry of the last of such completed previous years to the probable date of departure the Income-tax Officer shall estimate the total income of such person during such period and assess it at the rate in force for the financial year in which such assessment is made:

Provided that nothing herein contained shall authorise an Income-tax Officer to assess any income, profits or gains which have escaped assessment *or have been under-assessed,* or have been assessed at too low a rate, *or have been the subject of excessive relief under this Act but* in respect of which he is debarred from issuing a notice under section 34.

(2) For the purpose of making an assessment under sub-section (1) the Income-tax Officer may serve a notice upon such person requiring him to furnish, within such time not being less than seven days as may be specified in the notice, a return in the same form and verified in the same manner as a return under sub-section (2) of section 22, setting forth (along with such other particulars as may be provided for in the notice) his total income for each of the completed previous years *comprised in the relevant period referred to in the first sentence of* sub-section (1) and his estimated total income for the period from the expiry of the last such completed previous year to the probable date of his departure ; and the provisions of this Act shall, so far as may be, apply as if the notice were a notice issued under sub-section (2) of section 22.

Tax of deceased person payable by representative.

24-B. (1) Where a person dies, his executor, administrator or other legal representative shall be liable to pay out of the estate of the deceased person to the extent to which the estate is capable of meeting the charge the tax assessed as payable by such person, or any tax which would have been payable by him under this Act if he had not died.

(2) Where a person dies before the publication of the notice referred to in sub-section (1) of section 22 or before he is served with a notice under sub-section (2) of section 22 or section 34, as the case may be, his executor, administrator or other legal representative shall, on the serving of the notice under sub-section (2) of section 22 or under section 34, as the case may be, comply therewith, and the Income-tax Officer may proceed to assess the total income of the deceased person as if such executor, administrator or other legal representative were the assessee.

(3) Where a person dies, without having furnished a return which he has been required to furnish under the provisions * * * of section 22, or having furnished a return which the Income-tax Officer has reason to believe to be incorrect or incomplete, the Income-tax Officer may make an assessment of the total income of such person and determine the tax payable by him on the basis of such assessment, and for this purpose may, *by the issue of the appropriate notice which would have had to be served upon the deceased person had he survived*, require from the executor, administrator or other legal representative of the deceased person any accounts, documents or other evidence which he might under the provisions of sections 22 and 23 have required from the deceased person.

Assessment in case of discontinued business.

25. (1) Where any business, profession or vocation on which income-tax was not at any time charged under the provisions of the Indian Income-tax Act, 1918, is discontinued in any year, an assessment may be made in that year on the basis of the income, profits or gains of the period between the end of the previous year and the date of such discontinuance in addition to the assessment, if any, made on the basis of the income, profits or gains of the previous year.

(2) Any person discontinuing any such business, profession or vocation shall give to the Income-tax Officer notice of such discontinuance within fifteen days thereof, and, where any person fails to give the notice required by this sub-section, the Income-tax Officer may direct that a sum shall be recovered from him by way of penalty not exceeding the amount of tax subsequently assessed on him in respect of any income, profits or gains of the business, profession or vocation up to the date of its discontinuance.

(3) Where any business, profession or vocation on which tax was at any time charged under the provisions of the Indian Income-tax Act, 1918, is discontinued, *then, unless there has been a succession by virtue of which the provisions of sub-section (4) have been rendered applicable*, no tax shall be payable in respect of the income, profits and gains of the period between the end of the previous year and the date of such discontinuance, and the assessee may further claim that the income, profits and gains of the previous year shall be deemed to have been the income, profits and gains of the said period. Where any such claim is made, an assessment shall be made on the basis of the income, profits and gains of the said period, and if an amount of tax has already been paid in respect of the income, profits and gains of the previous year exceeding

the amount payable on the basis of such assessment, a refund shall be given of the difference.

(4) Where the person who was at the commencement of the Indian Income-tax (Amendment) Act, 1939, carrying on any business, profession or vocation on which tax was at any time charged under the provisions of the Indian Income-tax Act, 1918, is succeeded in such capacity by another person, the change not being merely a change in the constitution of a partnership, no tax shall be payable by the first mentioned person in respect of the income, profits and gains of the period between the end of the previous year and the date of such succession, and such person may further claim that the income, profits and gains of the previous year shall be deemed to have been the income, profits and gains of the said period. Where any such claim is made, an assessment shall be made on the basis of the income, profits and gains of the said period, and, if an amount of tax has already been paid in respect of the income, profits and gains of the previous year exceeding the amount payable on the basis of such assessment, a refund shall be given of the difference.

(5) No claim to the relief afforded under sub-section (3) or sub-section (4) shall be entertained unless it is made before the expiry of one year from the date on which the business, profession or vocation was discontinued or the succession took place, as the case may be;

(6) Where an assessment is to be made under *sub-section* (1), *sub-section* (3) or *sub-section* (4) the Income-tax Officer may serve on the person whose income, profits and gains are to be assessed, or, in the case of a firm, on any person who was a member of such firm at the time of its discontinuance, or, in the case of a company, on the principal officer thereof, a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of section 22, and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that sub-section.

Assessment after partition of a Hindu undivided family.

25-A. (1) Where, at the time of making an assessment under section 23, it is claimed by or on behalf of any member of a Hindu family hitherto assessed as undivided that a partition has taken place among the members of such family, the Income-tax Officer shall make

such inquiry thereinto as he may think fit, and, if he is satisfied [1]* * * * that the joint family property has been partitioned among the various members or groups of members in definite portions he shall record an order to that effect:

Provided that no such order shall be recorded until notices of the inquiry have been served on all the members of the family.

(2) Where such an order has been passed, *or where any person has succeeded to a business, profession or vocation formerly carried on by a Hindu undivided family whose joint family property has been partitioned on or after the last day on which it carried on such business, profession or vocation* the Income-tax Officer shall make an assessment of the total income received by or on behalf of the joint family as such, as if no[2] * * * partition had taken place, and each member or group of members shall, in additon to any income-tax for which he or it may be separately liable and notwithstanding anything contained in sub-section (1) of section 14, be liable for a share of the tax on the income so assessed according to the portion of the joint family property allotted to him or it;

and the Income-tax Officer shall make assessments accordingly on the various members and groups of members in accordance with the provisions of section 23:

Provided that all the members and groups of members whose joint family property has been partitioned shall be liable jointly and severally for the tax assessed on the total income received by or on behalf of the joint family as such.

(3) Where such an order has not been passed in respect of a Hindu family hitherto assessed as undivided, such family shall be deemed, for the purposes of this Act, to continue to be a Hindu undivided family.

Change in constitution of a firm.

26. (1) Where, at the time of making an assessment under section 23, it is found that a change has occurred in the constitution of a firm or that a firm has been newly constituted, *the assessment shall be made on the firm as constituted* at the time of making the assessment.

Provided that the income, profits and gains of the previous year shall, for the purpose of inclusion in the total incomes of

[1] The words "that a separation of the members of the family has taken place" which occurred here have been omitted by the Income Tax (Amendment) Act, 7 of 1939.

[2] The words "separation or" have been omitted, *ibid.*

the partners, be apportioned between the partners who in such previous year were entitled to receive the same :

Provided further that when the tax assessed upon a partner cannot be recovered from him it shall be recovered from the firm as constituted at the time of making the assessment ;

(2) Where a person carrying on any business, profession or vocation has been succeeded in such capacity by another person, such person and such other person shall, subject to the provisions of sub-section (4) of section 25, each be assessed in respect of his actual share, if any, of the income, profits and gains of the previous year:

Provided that, when the person succeeded in the business, profession or vocation cannot be found, the assessment of the profits of the year in which the succession took place up to the date of succession, and for the year preceding that year shall be made on the person succeeding him in like manner and to the same amount as it would have been made on the person succeeded or when the tax in respect of the assessment made for either of such years assessed on the person succeeded cannot be recovered from him, it shall be payable by and recoverable from the person succeeding, and such person shall be entitled to recover from the person succeeded the amount of any tax so paid.

Procedure in registration of firms.

26-A. (*1*) Application may be made to the Income-tax Officer on behalf of any firm, constituted under an instrument of partnership specifying the individual shares of the partners, for registration for the purposes of this Act and of any other enactment for the time being in force relating to income-tax or super-tax.

(*2*) The application shall be made by such person or persons, and at such times and shall contain such particulars and shall be in such form, and be verified in such manner, as may be prescribed ; and it shall be dealt with by the Income-tax Officer in such manner as may be prescribed.

Cancellation of assessment when cause is shown.

27. Where an assessee[1] * * * within one month from the service of a notice of demand issued as hereinafter provided, satisfies the Income-tax Officer that he was prevented by sufficient cause from making the return required by section 22, or that he did not receive

[1] The words "or, in the case of a company, the principal officer thereof", were omitted by the Income-Tax (Amendment) Act, 7 of 1939.

the notice issued under sub-section (4) of section 22, or sub-section (2) of section 23, or that he had not a reasonable opportunity to comply, or was prevented by sufficient cause from complying, with the terms of the last-mentioned notices, the Income-tax Officer shall cancel the assessment and proceed to make a fresh assessment in accordance with the provisions of section 23.

Penalty for concealment of income or improper distribution of profits.

28. (1) *If the Income-tax Officer, the Appellate Assistant Commissioner [or the Commissioner],*[1] *in the course of any proceedings under this Act, is satisfied that any person—*

(a) has without reasonable cause failed to furnish the return of his total income which he was required to furnish by notice given under sub-section (1) or sub-section (2) of section 22 or section 34 or has without reasonable cause failed to furnish it within the time allowed and in the manner required by such notice, or

(b) has without reasonable cause failed to comply with a notice under sub-section (4) of section 22 or sub-section (2) of section 23, or

(c) has concealed the particulars of his income or deliberately furnished inaccurate particulars of such income,

[he may direct][2] *that such person shall pay by way of penalty, in the case referred to in clause (a), in addition to the amount of the income-tax and super-tax, if any, payable by him, a sum not exceeding one and a half times that amount ; and in the cases referred to in clauses (b) and (c), in addition to any tax payable by him, a sum not exceeding one and half times the amount of the income-tax and super-tax, if any, which would have been avoided if the income as returned by such person had been accepted as the correct income :*

Provided that—

(a) *no penalty for failure to furnish the return of his total income shall be imposed on an assessee whose total income is less than three thousand five hundred rupees unless he has been served with a notice under sub-section (2) of section 22 ;*

(b) *where a person has failed to comply with a notice under sub-section* (2) *of section 22 or section 34 and proves that he*

[1] These words will be substituted by "or the Appellate tribunal" after Part II of the Indian Income-Tax (Amendment) Act, 7 of 1939 comes into force (see f.n., p. 221).

[2] These words will be substituted by "he or it may direct", *ibid.*

has no income liable to tax, the penalty imposable under this sub-section shall be a penalty not exceeding twenty-five rupees ;

(c) no penalty shall be imposed under this sub-section upon any person assessable under section 42 as the agent of a person not resident in British India for failure to furnish the return required under section 22 unless a notice under sub-section (2) of that section or under section 34 has been served on him.

(2) If the Income-tax Officer, the *Appellate Assistant Commissioner* [or the Commissioner],[1] in the course of any proceedings under this Act, is satisfied that the profits of a registered firm have been distributed otherwise than in accordance with the shares of the partners as shown in the instrument of partnership registeied under this Act governing such distribution, and that any partner has thereby returned his income below its real amount, [he may direct][2] that such partner shall, *in addition to the income-tax and super-tax, if any, payable by him* pay by way of penalty a sum not exceeding one and a half times the amount of income-tax and super-tax which has been avoided, or would have been avoided if the income returned by such partner had been accepted as his correct income ; and no refund or other adjustment shall be claimable by any other partner by reason of such direction.

(3) No order shall be made under sub-section (1) or sub-section (2) unless the assessee or partner, as the case may be, has been heard, or has been given a reasonable opportunity of being heard.

(4) No prosecution for an offence against this Act shall be instituted in respect of the same facts on which a penalty has been imposed under this section.

(5) An *Appellate Assistant Commissioner* [or a Commissioner, who has made][3] an order under sub-section (1) or sub-section (2), shall forthwith send a copy of the same to the Income-tax Officer.

(6) The Income-tax Officer shall not impose any penalty under this section without the previous approval of the Inspecting Assistant Commissioner.

[1] These words will be substituted by "or the Appellate tribunal" after Part II of the Indian Income-Tax (Amendment) Act, 7 of 1939 comes into force (see f.n., p. 221).

[2] These words will be substituted by "he or it may direct", *ibid.*

[3] These words will be substituted by "or the Appellate tribunal on making" after Part II of the Indian Income-Tax (Amendment) Act 7 of 1939 comes into force (see f.n., p. 221).

Notice of demand.

29. *When any tax or penalty is due in consequence of any order passed under or in pursuance of this Act, the Income-tax Officer shall serve upon the assessee or other person liable to pay such tax or penalty a notice of demand in the prescribed form specifying the sum so payable.*

Appeal against assessment under this Act.

30. (*1*) Any assessee objecting to the amount of *income assessed under section 23 or section 27, or the amount of loss computed under section 24 or the amount of tax determined under section 23 or section 27,* or denying his liability to be assessed under this Act, or objecting to a refusal of an Income-tax Officer to register a firm under section 26-A or to make a fresh assessment under section 27, or *objecting* to any order under sub-section (2) of section 25 or section 25-A *or sub-section* (2) *of section 26 or* section 28, made by an Income-tax Officer, or *objecting to any penalty imposed by an Income-tax Officer under sub-section (6) of section 44-E or sub-section (5) of section 44-F or sub-section (1) of section 46, or objecting to a refusal of an Income-tax Officer to allow a claim to a refund under section 48, 49 or 49-F, or to the amount of the refund allowed by the Income-tax Officer under any of those sections, and any assessee, being a company, objecting to an order made by an Income-tax Officer under sub-section* (*1*) *of section 23-A,* may appeal to the *Appellate Assistant Commissioner* against the assessment or against such refusal or order :

Provided that no appeal shall lie against an order under sub-section (1) of section 46 unless the tax has been paid :

Provided further that where the partners of a firm are individually assessable on their shares in the total income of the firm, any such partner may appeal to the Appellate Assistant Commissioner against any order of an Income-tax Officer determining the amount of the total income or the loss of the firm or the apportionment thereof between the several partners, but in respect of matters which are determined by such order may not appeal against the assessment of his own total income:

Provided further that a shareholder in a company in respect of which an order under section 23-A has been passed by an Income-tax Officer, may not in respect of matters determined by such order appeal against the assessment of his own total income.

(*2*) The appeal shall ordinarily be presented within thirty days of receipt of the notice of demand relating to the assessment or penalty objected to or of the intimation of the refusal

to pass an order under sub-section (*1*) of section 25-A, or to register a firm under section 26-A or of the date of the refusal to make a fresh assessment under section 27 *or of the intimation of an order under sub-section* (*1*) *of section 23-A or under section 48, 49 or 49-F*, as the case may be ; but the *Appellate Assistant Commissioner* may admit an appeal after the expiration of the period if he is satisfied that the appellant had sufficient cause for not presenting it within that period.

(3) The appeal shall be in the prescribed form and shall be verified in the prescribed manner.

Hearing of appeal.

31. (*1*) The *Appellate Assistant Commissioner* shall fix a day and place for the hearing of the appeal, and may from time to time adjourn the hearing.

(2) The *Appellate Assistant Commissioner* may, before disposing of any appeal, make such further inquiry as he thinks fit, or cause further inquiry to be made by the Income-tax Officer.

(*2-A*) *The Appellate Assistant Commissioner may, at the hearing of an appeal, allow an appellant to go into any ground of appeal not specified in the grounds of appeal, if the Appellate Assistant Commissioner is satisfied that the omission of that ground from the form of appeal was not wilful or unreasonable.*

(3) In disposing of an appeal the *Appellate Assistant Commissioner* may, in the case of an order of assessment,—

(*a*) confirm, reduce, enhance or annual the assessment, *and, in the case of an assessment on a firm or association of persons, authorise the Income-tax Officer to amend accordingly any assessment made on any partner of the firm or any member of the association*, or

(*b*) set aside the assessment and direct the Income-tax Officer to make a fresh assessment after making such further inquiry as the Income-tax Officer thinks fit or the *Appellate Assistant Commissioner* may direct, and the Income-tax Officer shall thereupon proceed to make such fresh assessment *and determine where necessary the amount of tax payable* on *the basis of such fresh assessment*,

or, in the case of an order refusing to register a firm under section 26-A or to make a fresh assessment under section 27,

(*c*) confirm such order, or cancel it and direct the Income-tax Officer to register the firm or to make a fresh assessment, as the case may be,

or, in the case of an order under sub-section (2) of *section 25, or sub-section* (*1*) *of section 23-A or sub section* (2) *of section 26 or section 48, 49 or 49-F* ;

(*d*) confirm, cancel or vary such order ;

or, in the case of an order under sub-section (1) of section 25-A,

(e) confirm such order or cancel it and either direct the Income-tax Officer to make further inquiry and pass a fresh order or to make an assessment in the manner laid down in sub-section (2) of section 25-A,

or, in the case of an order under section 28 or sub-section (6) of sec. 44-E or sub-sec. (5) of sec. 44-F or sub-section (1) of section 46,

(f) confirm or cancel such order or vary it so as either to enhance or reduce the penalty:

or, in the case of an appeal against computation of loss under section 24,

(g) confirm or vary such computation:

Provided that the *Appellate Assistant Commissioner* shall not enhance an assessment *or a penalty* unless the appellant has had a reasonable opportunity of showing cause against such enhancement.

Provided further that at the hearing of any appeal against an order of an Income-tax Officer, the Income-tax Officer shall have the right to be heard either in person or by a representative.

Appeals against orders of Appellate Assistant Commissioner.

***32.** (*1*) Any assessee objecting to an order passed by an *Appellate Assistant Commissioner* under section 28 or to an order *under sub-section (3) of section 31 enhancing his assessment or a penalty imposed under section 28 or sub-section (6) of section 44-E of sub-section (5) of section 44-F* may appeal to the Commissioner within thirty days of the date on which he was served with notice of such order.

(*2*) The appeal shall be in the prescribed form, and shall be verified in the prescribed manner.

(*3*) In disposing of the appeal the Commissioner may, after giving the appellant an opportunity of being heard, pass such orders thereon as he thinks fit.

* When Part II of the Indian Income-Tax (Amendment) Act 7 of 1939 comes into force (see f.n., p. 221) this section shall be omitted.

Power of revision.

33. (*1*) The Commissioner may of his own motion call for the record of any proceeding under this Act which has been taken by any authority subordinate to him or by himself when exercising the powers of an *Appellate Assistant Commissioner* under *sub-section* (*5*) of section 5.

(*2*) On receipt of the record the Commissioner may make such enquiry or cause such inquiry to be made and, subject to the provisions of this Act, may pass such orders thereon as he thinks fit:

Provided that he shall not pass any order prejudicial to an assessee without hearing him or giving him a reasonable opportunity of being heard.

Appeals against orders of Appellate Assistant Commissioner.

***33.** (*1*) Any assessee objecting to an order passed by an Appellate Assistant Commissioner under section 28 or section 31 may appeal to the Appellate Tribunal within sixty days of the date on which he is served with notice of such order.

(*2*) The Commissioner may, if he objects to any order passed by an Appellate Assistant Commissioner under section 31, direct the Income-tax Officer to appeal to the Appellate Tribunal against such order, and such appeal may be made at any time before the expiry of sixty days from the date of the order.

(*3*) An appeal to the Appellate Tribunal shall be in the prescribed form and shall be verified in the prescribed manner, and shall, except in the case of an appeal referred to in sub-section (*2*), be accompanied by a fee of one hundred rupees.

(*4*) The Appellate Tribunal may, after giving both parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, and shall communicate any such orders to the assessee and to the Commissioner.

* When Part II of the Indian Income-Tax comes into force (see f.n., p. 221) s. 33 will be substituted by this section.

(5) Save as provided in section 66 orders passed by the Appellate Tribunal on appeal shall be final.

33-A. [*Omitted by the Indian Income-tax (Amendment) Act 7 of 1939*].

Income escaping assessment.

34. (*1*) If *in consequence of definite information which has come into his possession the Income-tax Officer discovers* that income, profits or gains chargeable to income-tax *have escaped assessment in any year, or have been under-assessed, or have been assessed at too low a rate, or have been the subject of excessive relief under this Act,* the Income-tax Officer may, *in any case in which he has reason to believe that the assessee has concealed the particulars of his income or deliberately furnished inaccurate particulars thereof, at any time within eight years, and in any other case at any time within four years* of the end of that year, serve on the person liable to pay tax on such income, profits or gains, or, in the case of a company, on the principal officer thereof, a notice containing all or any of the requirements which may be included in a notice under sub-section (*2*) of section 22, and may proceed to assess or re-assess such income, profits or gains, and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that sub-section:

Provided that the tax shall be charged at the rate at which it would have been charged had the income, profits or gains not escaped assessment or full assessment, as the case may be.

Provided further that when the income, profits or gains concerned are income, profits or gains liable to assessment for a year ending prior to the commencement of the Indian Income-tax (Amendment) Act, 1939, or where the assessment made or to be made is an assessment made or to be made on a person deemed to be the agent of a non-resident person under section 43, this sub-section shall have effect as if for the periods of eight years and four years a period of one year were substituted.

(2) No order of assessment under section 23 or of assessment or re-assessment under sub-section (1) of this section shall be made after the expiry, in any case to which clause (c) of sub-section (1) of section 28 applies, of eight years, and in any other case, of four years from the end of the year in which the income, profits or gains were first assessable.

Rectification of mistake.

35. (*1*) The Commissioner or *Appellate Assistant Commissioner* may, at any time *within four years* from the date of any order passed by him in appeal or, in the case of the Commissioner, in revision under section 33 and the Income-tax Officer may, at any time *within four years* from the date of any *assessment order passed by him* on his own motion rectify any mistake apparent from the record of the appeal, revision or assessment, as the case may be, and shall within the like period rectify any such mistake which has been *brought to his notice by an assessee:*

Provided that no such rectification shall be made, having the effect of enhancing an assessment unless the Commissioner, the *Appellate Assistant Commissioner* or the Income-tax Officer, as the case may be, has given notice to the assessee of his intention so to do and has allowed him a reasonable opportunity of being heard.

Provided futher that no such rectification shall be made of any mistake in any order passed more than one year before the commencement of the Indian Income-tax (Amendment) Act, 1939.

*[(*2*) *The provisions of sub-section* (*1*) *apply also in like manner to the rectification of mistakes by the Appellate Tribunal*].

(*2*) Where any such rectification has the effect of reducing the assessment, the Income-tax Officer shall make any refund which may be due to such assessee.

(*3*) Where any such rectification has the effect of enhancing the assessment, the Income-tax Officer shall serve on the assessee a notice of demand in the prescribed form specifying the sum payable, and such notice of demand shall be deemed to be issud under section 29, and the provisions of this Act shall apply accordingly.

Tax to be calculated to nearest anna.

36. In the determination of the amount of tax or of a refund payable under this Act, fractions of an anna less than six pies shall be disregarded, and fractions of an anna equal to or exceeding six pies shall be regarded as one anna.

* When Part II of the Indian Income-tax (Amendment) Act 7 of 1939 comes into force (see f.n., p. 221) this sub-section shall be inserted and sub-section (2) and (3) shall be renumbered sub-sections (3) and (4) respectively.

Power to take evidence on oath, etc.

37. The Income-tax Officer, *Appellate Assistant Commissioner* [and Commissioner][1] shall, for the purposes of this Chapter, have the same powers as are vested in a Court under the Code of Civil Procedure, 1908, when trying a suit in respect of the following matters, namely:—

(*a*) enforcing the attendance of any person and examining him on oath or affirmation;

(*b*) compelling the production of documents; and

(*c*) issuing commissioners for the examination of witnesses, and any proceeding before an Income-tax Officer, *Appellate Assistant Commissioner* [or Commissioner][2] under this Chapter shall be deemed to be a "judicial proceeding" within the meaning of section 193 and 228 and for the purposes of section 196 of the Indian Penal Code.

Power to call for information.

38. The Income-tax Officer or Assistant Commissioner may, for the purposes of this Act,—

(*1*) require any firm, or Hindu undivided family to furnish him with a return of the members of the firm, or of the manager or adult male members of the family, as the case may be, and of their addresses;

(*2*) require any person whom he has reason to believe to be a trustee, guardian, or agent, to furnish him with a return of the names of the persons for or of whom he is trustee, guardian, or agent, and of their addresses;

(*3*) *require any assessee to furnish a statement of the names and addresses of all persons to whom he has paid in any year rent, interest, commission, royalty or brokerage, or any annuity not being an annuity taxable under the head 'Salaries', amounting to more than four hundred rupees, together with particulars of all such payments made.*

Power to inspect the register of members of any company.

39. The Income-tax Officer or Assistant Commissioner or any person authorised in writing in this behalf by the Income-tax Officer or Assistant Commissioner, may inspect and, if necessary, take copies, or cause

[1] When Part II of the Income-tax (Amendment) Act 7 of 1939 comes into force (see f.n., p. 221) these words shall be substituted by the words "Commissioner and Appellate Tribunal."

[2] These words shall be substituted by the words, "Commissioner or Appellate Tribunal", *ibid.*

copies to be taken, of any register of the members, debenture-holders or mortgagees of any company or of any entry in such register.

CHAPTER V.

LIABILITY IN SPECIAL CASES.

Guardians, trustees and agents.

40. In the case of any guardian, trustee or agent of any person being a minor, lunatic or idiot or residing out of British India (all of which persons are hereinafter in this section included in the term beneficiary) *being entitled to receive on behalf of such beneficiary any income,* profits or gains chargeable under this Act, the tax shall be levied upon and recoverable from such guardian, trustee or agent, as the case may be, in like manner and to the same amount as it would be leviable upon and recoverable from any such beneficiary if of full age, sound mind, or resident in British India, and in direct receipt of such income, profits or gains, and all the provisions of this Act shall apply accordingly.

Provided that in the case of a beneficiary being a person residing out of British India the tax may be levied upon and recovered from him direct.

Courts of Wards, etc.

41. (*1*) In the case of income, profits or gains chargeable under this Act which the Courts of Wards, the Administrator-General, the Official Trustees or any receiver or manager (including any person whatever his designation who in fact manages property on behalf of another) appointed by or under any order of a Court *or any trustee or trustees appointed under a duly executed trust deed, (including the trustee or trustees under any Wakf deed which is valid under the Mussalman Wakf Validating Act, 1913), are entitled to receive on behalf of any person,* the tax shall be levied upon and recoverable from such Court of Wards, Administrator-General, Official Trustee, receiver or manager *or trustee or trustees,* in the like manner and to the same amount as it would be leviable upon and recoverable from *the person on whose behalf such income, profits or gains are receivable,* and all the provisions of this Act shall apply accordingly.

Provided that where any such income, profits or gains or any part thereof are not specifically receivable on behalf of any

one person, or where the individual shares of the persons on whose behalf they are receivable are indeterminate or unknown, the tax shall be levied and recoverable at the maximum rate:

Provided further that when part only of the income, profits and gains of a trust is chargeable under this Act, that proportion only of the income, profits and gains receivable by a beneficiary from the trust which the part so chargeable bears to the whole income, profits and gains of the trust shall be deemed to have been derived from that part.

(2) Nothing contained in sub-section (1) shall prevent either the direct assessment of the person on whose behalf income, profits or gains therein referred to are receivable, or the recovery from such person of the tax payable in respect of such income, profits or gains.

Non-residents.

42. *(1) All income, profits or gains accruing or arising,* whether directly or indirectly, through or from any business connection *in British India, or through or from any property in British India, or through or from any asset or source of income in British India, or through or from any money lent at interest and brought into British India in cash or in kind,* shall be deemed to be income accruing or arising within British India, and *where the person entitled to the income, profits or gains is not resident in British India, shall be chargeable to income-tax either in his name or in the name of his agent, and in the latter case* such agent shall be deemed to be, for all the purposes of this Act, the assessee in respect of such income-tax:

Provided that where the person entitled to the income, profits or gains is not resident in British India, the income-tax so chargeable may be recovered by deduction under any of the provisions of section 18 and that any arrears of tax may be recovered also in accordance with the provisions of this Act from any assets of the non-resident person which are, or may at any time come within British India.

Provided further that any such agent, or any person who apprehends that he may be assessed as such an agent, may retain out of any money payable by him to such non-resident person a sum equal to his estimated liability under this sub-section, and in the event of any disagreement between the non-resident person and such agent or person as to the amount to be so retained, such agent or person may secure from the Income-tax Officer a certificate stating the amount to be so retained pending final settlement of the liability, and the certificate so obtained shall be his warrant for retaining that amount:

Provided further that the amount recoverable from such agent or person at the time of final settlement shall not exceed the amount specified in such certificate except to the extent to which such agent or person may at such time have in his hands additional assets of such non-resident person.

(2) Where a person not resident *or not ordinarily resident* in British India, * * * carries on business with a person resident in British India, and it appears to the Income-tax Officer, * * * that owing to the close connection *between such persons the course of business is so arranged that the business done by the resident person with the person not resident or not ordinarily resident* produces to the resident either no profits or less than the ordinary profits which might be expected to arise in that business, the profits derived therefrom or which may reasonably be deemed to have been derived therefrom, shall be chargeable to income-tax in the name of the resident person who shall be deemed to be, for all the purposes of this Act, the assessee in respect of such income-tax.

(3) *In the case of a business of which all the operations are not carried out in British India, the profits and gains of the business deemed under this section to accrue or arise in British India shall be only such profits and gains as are reasonably attributable to that part of the operations carried out in British India.*

Agent to include persons treated as such.

43. Any person employed by or on behalf of a person residing out of British India, or having any business connection with such person, or through whom such person is in the receipt of any income, profits or gains upon whom the Income-tax Officer has caused a notice to be served of his intention of treating him as the agent of the non-resident person shall, for all the purposes of this Act, be deemed to be such agent :

Provided that where transactions are carried on in the ordinary course of business through a broker in British India in such circumstances that the broker does not in respect of such transactions deal directly with or on behalf of a non-resident principal but deals with or through a non-resident broker who is carrying on such transactions in the ordinary course of his business and not as a principal such first mentioned broker shall not be deemed to be an agent under this section in respect of such transactions :

Provided *further* that no person shall be deemed to be the agent of a non-resident person, unless he has had an

opportunity of being heard by the Income-tax Officer as to his liability.

Liability in case of a discontinued firm or association.

44. *Where any business, profession or vocation carried on by a firm or association of persons has been discontinued, or where an association of persons is dissolved, every person who was at the time of such discontinuance or dissolution a partner of such firm or a member of such association shall, in respect of the income, profits and gains of the firm or association, be jointly and severally liable to assessment under Chapter IV and for the amount of tax payable and all the provisions of Chapter IV shall, so far as may be, apply to any such assessment.*

CHAPTER V-A.[1]

SPECIAL PROVISIONS RELATING TO CERTAIN CLASSES OF SHIPPING.

Liability to tax of occasional shipping.

44-A. The provisions of this Chapter shall, notwithstanding anything contained in the other provisions of this Act, apply for the purpose of the levy and recovery of tax in the case of any person who resides out of British India and carries on business in British India in any year as the owner or charterer of a ship (such person hereinafter in this Chapter being referred to as the principal), unless the Income-tax Officer is satisfied that there is an agent of such principal from whom the tax will be recoverable in the following year under the other provisions of this Act.

Return of profits and gains.

44-B. (*1*) Before the departure from any port in British India of any ship in respect of which the provisions of this Chapter apply, the master of the ship shall prepare and furnish to the Income-tax Officer a return of the full amount paid or payable to the principal, or to any person on his behalf, on account of the carriage of all passengers, live-stock or goods shipped at that port since the last arrival of the ship thereat.

[1] Chapter V-A was inserted by s. 3 of the Indian Income-tax (Further Amendment) Act, 27 of 1923.

(2) On receipt of the return, the Income-tax Officer shall asssess the amount referred to in sub-section (1), and for this purpose may call for such accounts or documents as he may require, and one-twentieth of the amount so assessed shall be deemed to be the amount of the profits and gains accruing to the principal on account of the carriage of the passengers, live-stock and goods shipped at the port.

(3) When the profits and gains have been assessed as aforesaid, the Income-tax Officer shall determine the sum payable as tax thereon at the rate for the time being applicable to the total income of a company, and such sum shall be payable by the master of the ship, and a port-clearance shall not be granted to the ship until the Customs-collector, or other officer duly authorised to grant the same, is satisfied that the tax has been duly paid.

Adjustment.

44-C. Nothing in this Chapter shall be deemed to prevent a principal from claiming, in the year following that in which any payment has been made on his behalf under this Chapter, that an assessment be made of his total income in the previous year, and that the tax payable on the basis thereof be determined in accordance with the other provisions of this Act, and, if he so claims, any such payment as aforesaid shall be treated as a payment in advance of the tax and the difference between the sum so paid, and the amount of tax found payable by him shall be paid by him or refunded to him, as the case may be.

*CHAPTER V-B.

SPECIAL PROVISIONS RELATING TO AVOIDANCE OF LIABILITY TO INCOME-TAX AND SUPER-TAX.

Avoidance of Income-tax by transactions resulting in the transfer of income to persons resident or ordinarily resident abroad.

44-D. (1) Where any person has, by means of a transfer of assets, by virtue or in consequence whereof, either alone or in conjunction with associated operations, any income which if it were the income of such person would be chargeable to income-tax becomes payable to a person not

* This chapter consisting of ss. 44-D to 44-F have been inserted by the Income-tax (Amendment) Act 7 of 1939.

resident or to a person resident but not ordinarily resident in British India, acquired any rights by virtue or in consequence of which he has within the meaning of this section power to enjoy such income, whether forthwith or in the future, that income shall, whether it would or would not have been chargeable to income-tax apart from the provisions of this section, be deemed to be income of such first mentioned person for all the purposes of this Act.

(2) Where any person receives or is entitled to receive, whether before or after any transfer of assets by virtue or in consequence whereof either alone or in conjunction with associated operatoins any income becomes payable to a person not resident or resident but not ordinarily resident in British India, any sum paid or payable by way of a loan or repayment of a loan or any other sum, being a sum which is not paid or payable for full consideration in money or money's worth, paid or payable otherwise than as income, such income shall, whether it would or would not have been chargeable to income-tax apart from the provisions of this section, be deemed to be the income of the first-mentioned person for all the purposes of this Act.

(3) Sub-sections (1) and (2) shall not apply if such first-mentioned person shows to the satisfaction of the Income-tax Officer either—

(a) that neither the transfer nor any associated operation had for its purpose or for one of its purposes the avoidance of liability to taxation ; or

(b) that the transfer and all associated operations were *bona fide* commercial transactions and were not designed for the purpose of avoiding liability to taxation.

(4) For the purposes of this section, an 'associated operation' means, in relation to any transfer, an operation of any kind effected by any person in relation to any of the assets transferred or any assets representing whether directly or indirectly any of the assets transferred, or to the income arising from any such assets, or to any assets representing whether directly or indirectly the accumulations of income arising from any such assets.

(5) A person shall, for the purposes of this section, be deemed to have power to enjoy income of a person not resident, or resident but not ordinarily resident, in British India, if—

(a) the income is in fact so dealt with by any person as to be calculated at some point of time and, whether

in the form of income or not, to enure for the benefit of the first mentioned person, or

(*b*) the receipt or accrual of the income operates to increase the value to such first mentioned person of any assets held by him or for his benefit, or

(*c*) such first mentioned person receives or is entitled to receive at any time any benefit provided or to be provided out of that income or out of moneys which are or will be available for the purpose by reason of the effect or successive effects of the associated operations on that income and on any assets which represent that income, or

(*d*) such first mentioned person has power by means of the exercise of any power of appointment or power of revocation or otherwise to obtain for himself, whether with or without the consent of any other person, the beneficial enjoyment of the income, or

(*e*) such first mentioned person is able, in any manner whatsoever and whether directly or indirectly, to control the application of the income.

(*6*) In determining whether a person has power to enjoy income within the meaning of this section, regard shall be had to the substantial result and effect of the transfer and any associated operations, and all benefits which may at any time accrue to such person as a result of the transfer and any associated operations shall be taken into account irrespective of the nature or form of the benefits.

(7) For the purposes of this section—

(*a*) the expression 'assets' includes property or rights of any kind, and the expression 'transfer' in relation to rights includes the creation of those rights ;

(*b*) the expression 'benefit' includes a payment of any kind ;

(*c*) references to income of a person not resident or of a person not ordinary resident in British India shall, where the amount of the income of a company for any year or period has been deemed to have been distributed under sub-section (*1*) of section 23-A, include references to so much of the income of the company for that year or period

as is equal to the amount deemed to have been distributed to that person ;

(*d*) references to assets representing any assets, income or accumulations of income include references to shares in or obligations of any company to which, or obligation of any other person to whom, those assets, that income or those accumulations are or have been transferred ;

(*e*) any body corporate incorporated outside British India shall be treated as if it were resident out of British India whether it is so resident or not.

(*8*) The provisions of this section shall apply for the purposes of assessment to income-tax and super-tax for the year ending on the 31st day of March, 1940, and subsequent years, and shall apply, in relation to transfers of assets and associated operations whether carried out before or after the commencement of the Indian Income-tax (Amendment) Act, 1939.

(*9*) Where any person has been charged to tax on any income deemed to be his under the provisions of this section, and that income is subsequently received by him, whether as income or in any other form, it shall not again be deemed to form part of his income for the purposes of this Act.

Avoidance of tax by certain transactions in securities

44-E. (*1*) Where the owner of any securities (in this sub-section and in sub-section (*2*) referred to as 'the owner') agrees to sell or transfer those securities, and by the same or any collateral agreement—

(*a*) agrees to buy back or re-acquire the securities, or

(*b*) acquires an option, which he subsequently exercises, to buy back or re-acquire the securities,

then, if the result of the transaction is that any interest becoming payable in respect of the securities is receivable otherwise than by the owner, the interest payable as aforesaid shall, whether it would or would not have been chargeable to tax apart from the provisions of this section, be deemed for all the purposes of this Act to be the income of the owner and not to be the income of any other person.

(*2*) The references in sub-section (*1*) to buying back or re-acquiring the securities shall be deemed to include references to buying or acquiring similar securities, so, however, that where similar securities are bought or acquired, the owner shall be under no greater liability to tax than he would have

been under if the original securities had been bought back or re-acquired.

(*3*) Where any person carrynig on a business which consists wholly or partly in dealing in securities agrees to buy or acquire any securities, and by the same or any collateral agreement—

(*a*) agrees to sell back or re-transfer the securities, or

(*b*) acquires an option, which he subsequently exercises, to sell back or re-transfer the securities,

then, if the result of the transaction is that any interest becoming payable in respect of the securities is receivable by him, no account shall be taken of the transaction in computing for any of the purposes of this Act the profits arising from or loss sustained in the business.

(*4*) Sub-section (*3*) shall have effect, subject to any necessary modifications, as if references to selling back or re-transferring the securities included references to selling or transferring similar securities.

(*5*) For the purpose of this section—

(*a*) the expression 'interest' includes a dividend ;

(*b*) the expression 'securities' includes stocks and shares ;

(*c*) securities shall be deemed to be similar if they entitle their holders to the same rights against the same persons as to capital and interest and the same remedies for the enforcement of those rights, notwithstanding any difference in the total nominal amounts of the respective securities or in the form in which they are held or the manner in which they can be transferred.

(*6*) The Income-tax Officer may by notice in writing require any person to furnish him within such time as he may direct (not being less than twenty-eight days), in respect of all securities of which such person was the owner at any time during the period specified in the notice, such particulars as he considers necessary for the purposes of this section and for the purpose of discovering whether tax has been borne in respect of the interest on all those securities ; and, if that person without reasonable excuse fails to comply with the notice, he shall be liable to a penalty not exceeding five hundred rupees and to a further penalty of the like amount for every day after the infliction of such penalty during which the failure continues.

44-F. (*1*) Any person upon whom notice is served by the Income-tax Officer requiring him to furnish a statement of particulars relating to any securities in which, at any time during the period specified in the notice he has had any beneficial interest, and in respect of which, within such period, either no income was received by him, or the income received by him was less than the sum to which the income would have amounted if the income from such securities had accrued from day to day and been apportioned accordingly, shall, whether an assessment to income-tax or super-tax in respect of his total income has or has not been made for the relevant year or years of assessment, furnish such a statement and such particulars in the form and within the time (not being less than twenty-eight days) required by the notice.

Avoidance of tax by sales *cum* dividend.

(*2*) If it appears to the Income-tax Officer by reference to all the circumstances in relation to the securities of any such person (including circumstances with respect to sales, purchases, dealings, contracts, arrangements, transfers, or any other transactions relating to such securities) that such person has thereby avoided or would avoid more than ten per cent. of the amount of the income-tax or super-tax for any year which would have been payable in his case in respect of the income from those securities if the income had been deemed to accrue from day to day and had been apportioned accordingly, and the income so deemed to have been apportioned to him had been treated as part of his total income from all sources for the purposes of income-tax or super-tax, then those securities shall be deemed to be securities to which sub-section (*3*) applies.

(*3*) For the purposes of assessment to income-tax or super-tax in the case of any such person, the income from any securities to which this sub-section applies shall be deemed to accrue from day to day, and in the case of the sale or transfer of any such securities by or to him shall be deemed to have been received as and when it is deemed to have accrued:

Provided that this section shall not apply if such person proves to the satisfaction of the Income-tax Officer that the avoidance of income-tax or super-tax was exceptional and not systematic and that there was not in his case in any of the three preceding years any such avoidance of income-tax or super-tax, or that the provisions of section 44-E have been applied in his case in respect of such income.

(4) If any person fails to furnish any statement or particulars required under this section, or if the Income-tax Officer is not satisfied with any statement or particulars furnished under this section, the Income-tax Officer may make an estimate of the amount of the income which, under the foregoing provisions of this section, is to be deemed to form part of the person's total income for the purposes of income-tax or super-tax.

(5) If any person without reasonable excuse fails to furnish any statement or particulars required under this section, he shall be liable to a penalty not exceeding five hundred rupees, and to a further penalty of the like amount for every day after the infliction of such penalty during which the failure continues.

(6) For the purpose of this section the expression 'securities' includes stocks and shares.

CHAPTER VI

RECOVERY OF TAX AND PENALTIES

Tax when payable.

45. Any amount specified as payable in a notice of demand under sub-section (3) of section 23-A or under section 29 or an order under section 31 or section 32 or section 33, shall be paid within the time, at the place and to the person mentioned in the notice or order, or if a time is not so mentioned, then on or before the first day of the second month following the date of the service of the notice or order, and any assessee failing so to pay shall be deemed to be in default, provided that, when an assessee has presented an appeal under section 30, * * * the Income-tax Officer may in his discretion treat the assessee as not being in default as long as such appeal is undisposed of:

Provided further that where an assessee has been assessed in respect of income arising outside British India in a country the laws of which prohibit or restrict the remittance of money to British India, the Income-tax Officer shall not treat the assessee as in default in respect of that part of the tax which is due in respect of that amount of his income which by reason of such prohibition or restriction cannot be brought into British India, and shall continue to treat the assessee as not in default

in respect of such part of the tax until the prohibition or restriction is removed.

Explanation.—For the purposes of this section income shall be deemed to have been brought into British India if it has been utilized or could have been utilized for the purposes of any expenditure actually incurred by the assessee without British India or if the income whether capitalized or not has been brought into British India in any form.

Mode and time of recovery.

46. (*1*) When an assessee is in default in making a payment of income-tax, the Income-tax Officer may in his discretion direct that, in addition to the amount of the arrears, a sum not exceeding that amount shall be recovered from the assessee by way of penalty.

(*1-A*) For the purposes of sub-section (*1*), the Income-tax Officer may direct the recovery of any sum less than the amount of the arrears and may enhance the sum so directed to be recovered from time to time in the case of a continuing default, so however that the total sum so directed to be recovered shall not exceed the amount of the arrears payable.

(*2*) The Income-tax Officer may forward to the Collector a certificate under his signature specifying the amount of arrears due from an assessee, and the Collector, on receipt of such certificate, shall proceed to recover from such assessee the amount specified therein as if it were an arrear of land revenue:

Provided that without prejudice to any other powers of the Collector in this behalf, he shall for the purpose of recovering the said amount have in respect of the attachment and sale of debts due to the assessee the powers which under the Code of Civil Procedure, 1908, a Civil Court has in respect of the attachment and sale of debts due to a judgment-debtor for the purpose of the recovery of an amount due under a decree.

(*3*) In any area with respect to which the Commissioner has directed that any arrears may be recovered by any process enforceable for the recovery of an arrear of any municipal tax or local rate imposed under any enactment for the time being in force in any part of the province, the Income-tax Officer may proceed to recover the amount due by such process.

(*4*) The Commissioner may direct by what authority any powers or duties incident under any such enactment as aforesaid to the enforcement of any process for the recovery of a municipal tax or local rate shall be exercised or performed when that process is employed under sub-section (*3*).

(*5*) If any assessee is in receipt of any income chargeable under the head "Salaries" the Income-tax Officer may require any person paying the same to deduct from any payment subsequent to the date of such requisition any arrears due from such assessee, and such person shall comply with any such requisition, and shall pay the sums so deducted to the credit of the Central Government, or as the Central Board of Revenue directs.

(*6*) If the recovery of income-tax in any area has been entrusted to a Provincial Government under section 124 (*1*) of the Government of India Act, 1935, the Provincial Government may direct with respect to that area or any part thereof, that income-tax shall be recovered therein with, and as an addition to, any municipal tax or local rate, by the same person and in the same manner as the municipal tax or local rate is recovered.

(*7*) Save in accordance with the provisions of sub-section (*1*) of section 42, *or of the proviso to section 45*, no proceedings for the recovery of any sum payable under this Act shall be commenced after the expiration of one year from the last day of *the financial year* in which any demand is made under this Act.

Recovery of penalties.

47. Any sum imposed by way of penalty under the provisions of sub-section (2) of section 25, section 28, *sub-section* (6) *of section 44-E, sub-section* (*5*) *of section 44-F* or sub-section (*1*) of section 46, shall be recoverable in the manner provided in this Chapter for the recovery of arrear of tax.

CHAPTER VII

REFUNDS

Refunds.

48. (*1*) *If any individual, Hindu undivided family, company, local authority, firm or other association of persons, or any partner of a firm or member of an association individually satisfies the Income-tax Officer or other authority appointed by the Central Government in this behalf that the amount of tax paid by him or on his behalf or treated as paid on his behalf for any year exceeds the amount with which he is properly chargeable*

under this Act for that year, he shall be entitled to a refund of any such excess.

(2) [1][*The Appellate Assistant Commissioner in the exercise of his appellate powers, or the Commissioner in the exercise of his appellate powers or powers of revision*] *if satisfied to the like effect shall cause a refund to be made by the Income-tax Officer of any amount found to have been wrongly paid or paid in excess.*

(3) *Where income of one person is included under any provision of this Act in the total income of any other person such other person only shall be entitled to a refund under this section in respect of such income.*

(4) *Nothing in this section shall operate to validate any objection or appeal which is otherwise invalid or to authorise the revision of any assessment or other matter which has become final and conclusive, or the review by any officer of a decision of his own which is subject to appeal or revision, or where any relief is specifically provided elsewhere in this Act, to entitle any person to any relief other or greater than that relief or to entitle any person to claim a refund of tax payable before the commencement of the Indian Income-tax (Amendment) Act, 1939, which he would not be entitled to claim but for the passing of that Act.*

48-A. [*Omitted by the Income-tax Amendment Act, 7 of 1939*].

Relief in respect of United Kingdom Income-tax.

49. (1) If any person who has paid *by deduction under section 18 or otherwise* Indian income-tax for any year on any part of his income proves to the satisfaction of the Income-tax Officer that he has paid *by deduction or otherwise* United Kingdom income-tax *for the corresponding year* in respect of the same part of his income and that the rate at which he was entitled to, and has obtained, relief under the provisions of section 27 of the Finance Act, 1920, is less than the Indian rate of tax charged in respect of that part of his income, he shall be entitled to a refund of a sum calculated on that part of his income at a rate equal to the difference between the Indian rate of tax or the appropriate rate of United Kingdom income-tax, whichever is less, and the rate at which he was entitled to, and obtained relief under that section :

[1] When Part II of the Income-tax (Amendment) Act 7 of 1939 comes into force (see p. 221), these words shall be substituted by the words "The Appellate Assistant Commissioner or the Appellate Tribunal in the exercise of their appellate powers".

Provided that in no case shall the rate at which such refund is calculated exceed half the Indian rate of tax appropriate to the income of the person entitled to relief.

(2) In sub-section (1)—

(a) the expression "Indian income-tax" means income-tax and super-tax charged in accordance with the provisions of this Act ;

(b) *the expression 'Indian rate of tax' means the amount of Indian income-tax exclusive of super-tax after deduction of any relief due to a claimant under the other provisions of this Act but before deduction of any relief due to him under this section, divided by his total income after deducting therefrom any income (including income from a share in an unregistered firm) exempted from tax by or under the provisions of this Act, added to the amount of Indian super-tax before deduction of any relief due to the claimant under this section divided by his total income ;*

(c) the expression "United Kingdom income-tax" means income-tax and super-tax chargeable in accordance with the provisions of the Income-tax Acts ;

(d) the expression 'appropriate rate of United Kingdom income-tax' has the meaning assigned to that expression in section 27 of the Finance Act, 1920, as amended by the Finance Act, 1927.

Relief in respect of Indian State and Dominion Income-tax.

49-A. *(1) The Central Government may, by notification in the official Gazette, make provision for the granting of relief in respect of income on which has been paid both income-tax (including super-tax) under this Act and Dominion income-tax.*

(2) For the purposes of this section 'Dominion income-tax' means any income-tax or super-tax charged under any law in force in any Indian State or in any part of His Majesty's Dominions (other than the United Kingdom) where the laws of that State or part provide for relief in respect of tax charged on income both in that State or part and in British India which appears to the Central Board of Revenue to correspond to the relief which may be granted by this section.

Payment of income-tax by company to be deemed payment by shareholder.

49-B. *Where a shareholder has received a dividend from a company which has paid income-tax imposed in British India or elsewhere, he shall be deemed, in respect of such dividend, himself to have paid the income-tax (exclusive of super-tax)*

paid by the company on so much of the dividend as bears to the whole the same proportion as the amount of income on which the company has paid such income-tax bears to the whole income of the company.

49-C. *(1) Where a shareholder has received a dividend from a company which has obtained the relief referred to in section 49 or granted under section 49-A or under the India and Burma (Income-tax Relief) Order, 1936, he shall be deemed in respect of such dividend himself to have obtained such relief at the rate at which such relief has been granted, in respect of income-tax only, to the company for the financial year preceding the year in which the dividend was paid.*

Relief granted to a company to be deemed relief granted to shareholder.

(2) If the rate at which a shareholder is deemed under sub-section (1) to have obtained relief exceeds the rate at which he would have been entitled to relief had such relief been given direct to him by or under the said sections or Order, any excess shall be recovered from him either as an addition to the tax payable by him on any assessment made on him under section 23 or section 34 or by setting it off against any relief due to him under section 48.

49-D. *If any person who has paid by deduction or otherwise Indian income-tax for any year in respect of any income arising without British India in a country the laws of which do not provide for any relief in respect of income-tax charged in British India proves that he has paid income-tax by deduction or otherwise under the laws of the said country in respect of the same income, he shall be entitled to the deduction from the Indian income-tax payable of a sum equal to one-half of such Indian income-tax or to one-half of such tax payable in the said country, whichever is the less.*

Relief in respect of tax charged in country not providing for relief in respect of British Indian income-tax.

49-E. Where under any of the provisions of this Act, a refund is found to be due to any person, the Income-tax Officer, *Appellate Assistant Commissioner* or Commissioner, as the case may be, may, in lieu of payment of the refund, set off the amount to be refunded, or any part of that amount against the tax, if any, remaining payable by the person to whom the refund is due.

Power to set off amount of refunds against tax remaining payable.

49-F. Where through death, incapacity, bankruptcy, liquidation or other cause, a person who would but for such cause have been entitled to a refund under any of the provisions of this Act, or to make a claim under section 48 or 49, is unable to receive such refund or to make such claim, his executor, administrator or other legal representative, or the trustee or receiver, as the case may be, shall be entitled to receive such refund or to make such claim for the benefit of such person or his estate.

Power of representative of deceased person or persons disabled to make claim on his behalf.

50. No claim to any refund of income-tax *or super-tax* under this Chapter shall be allowed, unless it is made within *four years from the last day of the financial year commencing next after the expiry of the previous year in which the income arose, accrued or was received or was deemed to have arisen, accrued or been received or was brought into British India*:

Limitation of claims for refund.

Provided that where the claim is to a refund of income-tax or super-tax paid prior to the commencement of the Indian Income-tax (Amendment) Act, 1939, the claim shall not be allowed unless it is made within one year from the last day of the year in which the tax was recovered or before the last day of the financial year commencing after the expiry of the previous year as defined in clause (11) of section 2 in which the income arose on which the tax was recovered, whichever period may expire later :

Provided *further* that a claim to refund under section 49 *of tax paid prior to the commencement of the Indian Income-tax Amendment Act,* 1939 may be admitted after the period of limitation herein prescribed, when the applicant satisfies the Commissioner, or an Assistant Commissioner of Income-tax specially empowered in this behalf by the Central Board of Revenue, that he had sufficient cause for not making the claim within such period.

50-A. [*Omitted by the Income-tax Amendment Act, 7 of 1939*].

CHAPTER VIII

Offences and Penalties.

Failure to make payments or deliver returns or statements or allow inspection.

51. If a person fails without reasonable cause or excuse—

(*a*) to deduct and pay any tax as required by section 18 or under sub-section (5) of section 46 ;

(*b*) to furnish a certificate required by sub-section (9) of section 18 or by section 20 to be furnished ;

(*c*) to furnish in due time any of the returns mentioned in section 19-A, section 20-A, section 21, *sub-section* (2) of section 22, or section 38 ;

(*d*) to produce, or cause to be produced, on or before the date mentioned in any notice under sub-section (4) of section 22, such accounts and documents as are referred to in the notice ;

(*e*) to grant inspection or allow copies to be taken in accordance with the provisions of section 39 ;

he shall, on conviction before a Magistrate, be punishable with fine which may extend to ten rupees for every day during which the default continues.

False statement in declaration.

52. If a person makes a statement in a verification mentioned in section 19-A or section 20-A *or section 21* or section 22 or sub-section (2) of section 26-A or sub-section (3) of section 30, or sub-section (2) of section 32 * * * which is false, and which he either knows or believes to be false, or does not believe to be true, he shall *be punishable, on conviction before a Magistrate, with simple imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both.*

Prosecution to be at instance of Inspecting Assistant Commissioner.

53. (*1*) A person shall not be proceeded against for an offence under section 51 or section 52 except at the instance of the *Inspecting Assistant Commissioner.*

(2) The Inspecting Assistant Commissioner may either before or after the institution of proceedings compound any such offence.

Disclosure of information by a public servant.

54. (*1*) All particulars contained in any statement made, return furnished or accounts or documents produced under the provisions of this Act, or in any evidence given, or

affidavit or deposition made, in the course of any proceedings under this Act other than proceedings under this Chapter, or in any record of any assessment proceeding, or any proceeding relating to the recovery of a demand, prepared for the purposes of this Act, shall be treated as confidential, and notwithstanding anything contained in the Indian Evidence Act, 1872, no Court shall, save as provided in this Act, be entitled to require any public servant to produce before it any such return, accounts, documents or record or any part of any such record, or to give evidence before it in respect thereof.

(2) If a public servant discloses any particulars contained in any such statement, return, accounts, documents, evidence, affidavit, deposition or record, he shall be punishable with imprisonment which may extend to six months, and shall also be liable to fine.

(3) * * * Nothing in this section shall apply to the disclosure—

(a) of any such particulars for the purposes of a prosecution under the Indian Penal Code in respect of any such statement, return, accounts, documents, evidence, affidavit or deposition, or for the purposes of a prosecution under this Act, or

(b) of any such particulars to any person acting in the execution of this Act where it is necessary to disclose the same to him for the purposes of this Act, or

(c) of any such particulars occasioned by the lawful employment under this Act of any process for the service of any notice or the recovery of any demand, or

(d) of any such particulars to a Civil Court in any suit to which Government is a party, which relates to any matter arising out of any proceeding under this Act, or

(e) of any such particulars to the Auditor-General of India for the purpose of enabling him to discharge his functions under section 144 of the Government of India Act, 1935, or

(f) of any such particulars to any officer appointed by the Auditor-General of India or the Central Board of Revenue to audit income-tax receipts or refunds, or

(g) of any such particulars, relevant to any inquiry into the conduct of an official of the Income-tax Department, to any persons appointed Commissioners under the Public Servants (Inquiries) Act, 1850, or to an officer otherwise appointed to hold such inquiry, or to a Public Service Commission established under the Government of India Act, 1935, when exercising its functions in relation to any matter arising out of any such inquiry, or

(*h*) of any such particulars occasioned by the lawful exercise by a public servant of his powers under the Indian Stamp Act, 1899, to impound an insufficiently stamped document, or

(i) of such facts, to an authorised officer of the United Kingdom, or of any Indian State or of any part of His Majesty's Dominions which has entered into an agreement with British India for the granting of double taxation relief, as may be necessary for the purpose of enabling such relief or a refund under section 49 of this Act to be given, or

(j) of such facts, to an officer of a Provincial Government, as may be necessary for the purpose of enabling that Government to levy or realise any tax imposed by it on agricultural income, or

(k) of such facts, to any authority exercising powers under the Sea Customs Act, 1878, or any Act of the Central Legislature imposing a duty of excise as may be necessary for enabling it duly to exercise such powers, or

(l) of such facts, to a Returning Officer, as may be necessary to establish whether a person is or is not entitled to be entered on an electoral roll ; or

(m) so much of such particulars, to the appropriate authority, as may be necessary to establish whether a person has or has not been assessed to income-tax in any particular year or years, where under the provisions of any law for the time being in force such fact is required to be established ;

(4) Nothing in this section shall apply to the production by a public servant before a Court of any document, declaration or affidavit filed, or the record of any statement or deposition made in a proceeding under section 25-A or section 26-A, or to the giving of evidence by a public servant in respect thereof.

(5) No prosecution shall be instituted under this section except with the previous sanction of the Commissioner.

CHAPTER IX.

SUPER-TAX.

55. In addition to the income-tax charged for any year, there shall be charged, levied and paid for that year in respect of the total

Charge of super-tax.

income of the previous year of any individual, Hindu undivided family, *company, local authority, unregistered firm or other association of persons,* not being a registered firm *or the partners of the firm or members of the association individually,* an additional duty of income-tax (in this Act referred to as super-tax) at the rate or rates laid down for that year by Act of the Central Legislature ;

Provided that where under the provisions of clause (b) of sub-section (5) of section 23 an unregistered firm has been assessed in the manner applicable to a registered firm, super-tax shall be payable by each partner of the firm individually on his share in the income, profits and gains of the firm and not by the firm itself ;

Provided *further* that, where the profits and gains of an unregistered firm *or other association of persons not being a company* have been assessed to super-tax, super-tax shall not be payable by *a partner of the firm or a member of the association, as the case may be* in respect of the amount of such profits and gains which is proportionate to his share.

Total income for purposes of super-tax.

56. Subject to the provisions of this Chapter, the total income of any individual, Hindu undivided family, company, *local authority,* unregistered firm or other *association of persons* shall, for the purposes of super-tax, be the total income as assessed for the purposes of income-tax, and where an assessment of total income has become final and conclusive for the purposes of income-tax for any year, the assessment shall also be final and conclusive for the purposes of super-tax for the same year.

57. * * * [*Omitted by the Income-tax (Amendment) Act, 7 of 1939*].

Application of Act to super-tax.

58. (*1*) All the provisions of this Act, relating to the charge, assessment, collection and recovery of income-tax except those contained in section 3, *the second proviso* to sub-section (*1*) of section 7, the second and third provisos to section 8, sub-section (2) of section 14, and sections 15, * * 19 *and 20 and the first proviso to sub-section (1) of section 41 and section 58-F* and sub-section (2) of section 58-G shall apply, so far as may be, to the charge, assessment, collection and recovery of super-tax.

(2) Save as provided in sub-sections (2), (2-*A*), (2-*B*), (3-*B*), (3*C*), (3-*D*) and (3-*E*) of section 18, * * and section 58-H, super-tax shall be payable by the assessee direct.

CHAPTER IX-A.[1]

SPECIAL PROVISIONS RELATING TO CERTAIN CLASSES OF PROVIDENT FUNDS.

58-A. In this Chapter, unless there is anything repugnant in the subject or context,—

Definitions.

(*a*) a "recognised providend fund" means a provident fund which has been and continues to be recognised by the Commissioner, in accordance with the provisions of this Chapter ;

(*b*) an "employer" means—

(*i*) a Hindu undivided family, company, firm or other association of[2] * * persons, or

(*ii*) an individual engaged in a business, profession or vocation whereof the profits and gains are assessable to income-tax under section 10 * *, maintaining a provident fund for the benefit of his or its employees ;

(*c*) an "employee" means an employee participating in a provident fund, but does not include a personal or domestic servant ;

(*d*) a "contribution" means any sum credited by or on behalf of any employee out of his salary, or by an employer out of his own monies, to the individual account of an employee, but does not include any sum credited as interest ;

(*e*) the "balance to the credit" of an employee means the total amount to the credit of his individual account in a provident fund at any time ;

(*f*) the "annual accretion" to the balance to the credit of an employee means the increase to such balance in any year, arising from contributions and interest ;

(*g*) the "accumulated balance due" to an employee means the balance to his credit, or such portion thereof as may be claimable by him under the regulations of the fund, on the day he ceases to be an employee of the employer maintaining the fund ; and

(*h*) the "regulations of a fund" means the special body of regulations governing the constitution and administration of a particular provident fund.

[1] This chapter was inserted by s. 5 of the Indian Income-tax (Provident Funds Relief) Act, 12 of 1929.

[2] The words "individuals or" were omitted by the Income-tax (Amendment) Act, 7 of 1939.

The according and withdrawal of recognition.

58-B. (*1*) The Commissioner of Income-tax may accord recognition to any provident fund which, in his opinion, satisfies the conditions prescribed in section 58-C and the rules made thereunder, and may, at any time, withdraw such recognition if, in his opinion, the provident fund contravenes any of those conditions.

(*2*)[1] * * * An order according recognition shall take effect on such date as the Commissioner may fix in accordance with any rules the Central Board of Revenue may make in this behalf, such date not being later than the last day of the financial year in which the order is made.

(*3*) An order withdrawing recognition shall take effect from the day on which it is made.

(*4*) An employer objecting to an order of the Commissioner refusing to recognise *or an order withdrawing recognition from* a provident fund may appeal, within sixty days of such order, to the Central Board of Revenue.

The appeal shall be in the form and shall be verified in the manner prescribed by the Central Board of Revenue.

Conditions to be satisfied by a recognised Provident Fund.

58-C. (*1*) In order that a provident fund may receive and retain recognition, it shall satisfy the conditions set out below and any other conditions which the Central Government may, by rule, prescribe—

(*a*) All employees shall be employed in India, or shall be employed by an employer whose principal place of business is in British India.

(*b*) The contributions of an employee in any year shall be a definite proportion of his salary for that year, and shall be deducted by the employer from the employee's salary in that proportion, at each periodical payment of such salary in that year, and credited to the employee's individual account in the fund.

(*c*) Subject to the provisions of section 58-D, the contributions of an employer to the individual account of an employee in any year shall not exceed the amount of the contributions of the employee in that year, and shall be credited to the employee's individual account at intervals not exceeding one year.

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[1] Sub-section (2) was omitted and sub-sections (3), (4) and (5) were renumbered as (2), (3) and (4) respectively by the Income-tax (Amendment) Act, 7 of 1939.

(*d*) The fund shall consist of contributions as above specified, of accumulations thereof, and of interest (simple and compound), credited in respect of such contributions and accumulations, and of securities purchased therewith, and of no other sums.

(*e*) The fund shall be vested in two or more trustees or in the Official Trustee, under a trust which shall not be revocable save with the consent of all the beneficiaries.

(*f*) The employer shall not be entitled to recover any sum whatsoever from the fund, save in cases where the employee is dismissed for misconduct or voluntarily leaves his employment otherwise than on account of ill-health or other unavoidable cause before the expiration of the term of service specified in this behalf in the regulations of the fund.

In such cases the recoveries made by the employer shall be limited to the contributions made by him to the individual account of the employee, and to interest (simple and compound) credited in respect of such contributions and accumulations thereof, in accordance with the regulations of the fund.

(*g*) The accumulated balance due to an employee shall be payable on the day he ceases to be an employee of the employer maintaining the fund.

(*h*) Save as provided in clause (*g*), or in accordance with such conditions and restrictions as the Central Government may, by rules, prescribe, no portion of the balance to the credit of an employee shall be payable to him.

(2) Where there is a repugnance between any regulation of a recognised provident fund and any provision of this Chapter or of the rules made thereunder, the regulation shall, to the extent of the repugnance, be of no effect.

The Commissioner may, at any time, require that such repugnance shall be removed from the regulations of the fund.

Power to relax restrictions of employer's contributions in certain cases.

58-D. Subject to any rules which the Central Government may make in this behalf, the Commissioner may, in respect of any particular fund, relax the provisions of condition (*c*) of sub-section (1) of section 58-C—

(*a*) so as to permit the payment of larger contributions by an employer to the individual accounts of employees whose salary does not exceed five hundred rupees per mensem ; and

(*b*) so as to permit the crediting by employers to the individual accounts of employees of periodical bonuses or other

contributions of a contingent nature, where the calculation and payment of such bonuses or other contributions is provided for on definite principles by the regulations of the fund.

Annual accretion deemed to be income received.

58-E. The annual accretion in any year to the balance at the credit of an employee participating in a recognised provident fund shall be deemed to have been received by him in that year and shall be included in his total income for that year, and, subject to the exemptions specified in section 58-F, shall be liable to income-tax and super-tax:

Provided that, for the purpose of sub-section (3) of section 15, out of such annual accretion only the employee's own contributions shall be included in his total income.

Exemption of annual accretion from income-tax.

58-F. (*1*) An employee shall not be liable to pay income-tax on contributions to his individual account in a recognised provident fund, in so far as the aggregate of such contributions in any year does not exceed one-sixth of his salary in that year *or six thousand rupees, whichever is less.*

(2) Interest credited on the accumulated balance of any employee in a recognised provident fund shall be exempt from payment of income-tax, if and in so far as it does not exceed one-third of the salary of the employee for the year concerned and in so far as it is allowed at a rate not exceeding such rate as the Central Government may, by notification in the Official Gazette fix in this behalf.

Exemption of accumulated balance from income-tax and super-tax.

58-G. (*1*) Where the accumulated balance due to an employee participating in a recognised provident fund becomes payable, such accumulated balance shall be exempt from payment of super-tax except to the extent of an amount equal to the aggregate of the amounts of super-tax on annual accretions that would have been payable under section 58-E up to the first day of April, 1933, if the Indian Income-tax (Second Amendment) Act, 1933, had come into force on the 15th March, 1930.

(*2*) Where an employee participating in a recognised provident fund has rendered continuous service with his employer for a period of not less than five years, and the accumulated balance due to him becomes payable, such accumulated balance shall be exempt from payment of income-tax and shall be excluded from the computation of his total income:

Provided that the Commissioner of Income-tax may allow such exemption and exclusion where the employee has rendered continuous service with the employer for a period of less than five years, if, in his opinion, the service has been terminated by reason of employee's ill-health, or by the contraction or discontinuance of the employer's business, or other cause beyond the control of the employee.

(3) Where exemption from payment of income-tax is not allowed under the provisions of sub-section (2), the Income-tax Officer shall calculate the total of the various sums of income-tax *and super-tax which would have been payable by the employee in respect of his total income for each of the years concerned if the fund had not been a recognised provident fund, and the amount by which such total exceeds the total of all sums paid by or on behalf of such employee by way of tax for such years shall be payable by the employee in addition to any other income-tax and super-tax* for which he may be liable for the year in which the accumulated balance due to him becomes payable.

Duduction at source of income-tax payable on accumulated balance due.

58-H. The trustees of a recognised provident fund, or other person authorised by the regulations of the fund to make payment of accumulated balances due to employees, shall, at the time an accumulated balance due to an employee is paid, deduct therefrom any income-tax payable under sub-section (3) of section 58-G and any income-tax and super-tax payable on an employee's total income as determined under sub-section (3) of section 58-J, and sub-sections (4) to (9) of sections 18 shall apply as if the sum to be deducted were income-tax payable under the head "Salaries".

Accounts of recognised provident funds.

58-I. (1) The accounts of a recognised provident fund shall be maintained by the trustees of the fund and shall be in such form and for such periods, and shall contain such particulars as the Central Board of Revenue may prescribe.

(2) The accounts shall be open to inspection at all reasonable times by Income-tax authorities, and the trustees shall furnish to the Income-tax Officer such abstracts thereof as the Central Board of Revenue may prescribe.

Treatment of balances in newly recognised provident funds.

58-J. (1) Where the recognition is accorded to a provident fund with existing balances, an account shall be made of the fund up to the day before the day on which the recognition takes effect, showing the balance

to the credit of each employee on such day, and containing such further particulars as the Central Board of Revenue may prescribe.

(*2*) The account shall also show in respect of the balance to the credit of each employee the amount thereof which is to be transferred to that employee's account in the recognised provident fund, and such amount (hereinafter called his transferred balance) shall be shown as the balance to his credit in the recognised provident fund on the date on which the recognition of the fund takes effect, and sub-sections (*3*) and (*4*) shall apply thereto.

Any portion of the balance to the credit of an employee in the existing fund which is not transferred to the recognised fund shall be excluded from the accounts of the recognised fund and shall be liable to income-tax and super-tax in accordance with the provisions of this Act other than this Chapter.

(*3*) Subject to such rules as the Central Board of Revenue may make in this behalf, the Income-tax Officer shall make a calculation of the aggregate of all sums comprised in a transferred balance which would have been liable to income-tax if this Chapter had been in force from the date of the institution of the fund, without regard to any tax which may have been paid on any such sum, and such aggregate (if any) shall be deemed to be income received by the employee in the year in which the recognition of the fund takes effect, and shall be included in the employee's total income for that year ; and, for the purposes of assessment, the remainder of the transferred balance shall be disregarded, but no other exemption or relief, by way of refund or otherwise, shall be granted in respect of any sum comprised in such transferred balance :

Provided that, in cases of serious accounting difficulty, the Commissioner shall have power subject to the said rules, to make a summary calculation of such aggregate.

(*4*) Notwithstanding anything contained in condition (*h*) of sub-section (*1*) of section 58-C, an employee, in order to enable him to pay the amount of tax assessed on his total income as determined under sub-section (*3*), shall be entitled to withdraw from the balance to his credit in the recognised provident fund a sum not exceeding the difference between such amount and the amount to which he would have been assessed if the transferred balance had not been included in his total income.

(*5*) Nothing in this section shall affect the rights of the persons administering an unrecognised provident fund or

dealing with it, or with the balance to the credit of any individual employee, before recognition is accorded, in any manner which may be lawful.

Treatment of fund transferred by employer to trustee.

58-K. (*1*) Where an employer who maintains a provident fund (whether recognised or not) for the benefit of his employees and has not transferred the fund or any portion of it, transfers such fund or portion to trustees in trust for the employees participation in the fund, the amount so transferred shall be deemed to be of the nature of capital expenditure.

(*2*) When an employee participating in such fund is paid the accumulated balance due to him therefrom, any portion of such balance as represents his share in the amount so transferred to the trustee (without addition of interest, and execlusive of the employee's contributions and interest thereon) shall, *if the employer has made effective arrangements to secure that tax shall be deducted at source from the amount of such share when paid to the employee,* be deemed to be an expenditure by the employer within the meaning of clause (*xii*) of sub-section (*2*) of section 10, incurred in the year in which the accumulated balance due to the employee is paid.

Provisions relating to rules.

58-L. (*1*) All rules made under this Chapter shall be subject to the provisions of sub-sections (*4*) and (*5*) of section 59.

(*2*) In addition to any power conferred by this Chapter, the Central Government may make rules—

(*a*) prescribing the statements and other information to be submitted with an application for recognition ;

(*b*) limiting the contributions to a recognised provident fund by employees of a company who are shareholders in the company ;

(*c*) providing for the assessment by way of penalty of any consideration received by an employee for an assignment of, or creation of a charge upon, his beneficial interest in a recognised provident fund ;

(*d*) determining the extent to and the manner in which exemption from payment of income-tax and super-tax may be granted in respect of contributions and interest credited to the individual accounts of employees in a provident fund from which recognition has been withdrawn ; and

(*e*) generally, to carry out the purposes of this Chapter and to secure such further control over the recog-

nition of provident funds and the administration of recognised provident funds as it may deem requisite.

58-M. Application of this Chapter. This Chapter shall not apply to any provident fund to which the Provident Funds Act, 1925, applies.

*CHAPTER IX-B

Special Provisions Relating to Certain Classes of Superannuation Funds

58-N. Definitions. In this Chapter, unless there is anything repugnant in the subject or context,—

(*a*) 'approved superannuation fund' means a superannuation fund or any part of a superannuation fund which has been and continues to be approved by the Central Board of Revenue in accordance with the provisions of this Chapter ;

(*b*) 'employer', 'employee' and 'contribution' have, in relation to superannuation funds, the meanings assigned to those expressions in section 58-A in relation to provident funds ;

(*c*) 'ordinary annual contribution' means an annual contribution of a fixed amount or an annual contribution computed on some definite basis by reference to the earnings, the contributions or the number of members of the fund.

58-O. Approval and withdrawal of approval. (*1*) The Central Board of Revenue may accord approval to any superannuation fund or any part of a superannuation fund which in its opinion complies with the requirements of section 58-P, and may at any time withdraw such approval, if in its opinion the circumstances of the fund or part cease to warrant the continuance of the approval.

(*2*) The Central Board of Revenue shall communicate in writing to the trustees of the fund the grant of approval with the date on which the approval is to take effect, and, where the approval is granted subject to conditions, those conditions.

(*3*) The Central Board of Revenue shall communicate in writing to the trustees of the fund any withdrawal of approval

* This chapter consisting of ss. 58-N to 58-V have been inserted by the Income-tax (Amendment) Act, 7 of 1939.

with the reasons for such withdrawal and the date on which the withdrawal is to take effect.

(4) The Central Board of Revenue shall neither refuse nor withdraw approval to any superannuation fund or any part of a superannuation fund unless it has given the trustees of that fund a reasonable opportunity of being heard in the matter.

Conditions for approval.

58-P. In order that a superannuation fund may receive and retain approval the following conditions shall be satisfied, namely:—

(*a*) the fund shall be a fund established under an irrevocable trust in connection with a trade or undertaking carried on in British India;

(*b*) the fund shall have for its sole purpose the provision of annuities for employees in the trade or undertaking on their retirement at or after a specified age or on their becoming incapacitated prior to such retirement, or for the widows, children or dependants of persons who are or have been such employees on the death of those persons; and

(*c*) the employer in the trade or undertaking shall be a contributor to the fund:

Provided that the Central Board of Revenue may, if it thinks fit and subject to such conditions, if any, as it thinks proper to attach to the approval, approve a fund or any part of a fund—

(*i*) notwithstanding that the rules of the fund provide for the return in certain contingencies of contributions paid to the fund, or

(*ii*) if the main purpose of the fund is the provision of such annuities as aforesaid, notwithstanding that such provision is not its sole purpose, or

(*iii*) notwithstanding that the trade or undertaking in connection with which the fund is established is carried on only partly in British India.

Application for approval.

58-Q. (*1*) An application for approval of a superannuation fund or part of a superannuation fund for any year of assessment shall be made in writing before the end of that year by the trustees of the fund to the Income-tax Officer, and shall be accompanied by a copy of the instrument under which the fund is established and by two copies of the rules and of the accounts of the fund for the last year for which such accounts have been made up. The Central Board of

Revenue may require such further information to be supplied as it thinks proper.

(2) If any alteration in the rules, constitution, objects or conditions of the fund is made at any time after the date of the application for approval, the trustees of the fund shall forthwith communicate such alteration to the Income-tax Officer, and in default of such communication any approval given shall, unless the Central Board of Revenue otherwise orders, be deemed to have been withdrawn from the date on which the alteration took effect.

Exemption of superannuation fund from income-tax.

58-R. Income derived from investments or deposits of an approved superannuation fund shall be exempt from payment of income-tax, and any sum paid by an employer or an employee by way of contribution towards an approved superannuation fund shall, in the case of an employer, be deducted in computing his income, profits or gains for the purpose of assessment, and, in the case of an employee, be treated for all the purposes of this Act as if it were a sum to which the provisions of section 15 apply:

Provided that no such exemption shall be allowable to an employee in respect of any sum which is not an ordinary annual contribution:

Provided further that where a contribution by an employer is not an ordinary annual contribution it shall, for the purposes of this section, be treated, as the Central Board of Revenue may direct, either as an expense incurred in the year in which the sum is paid, or as an expense to be spread over such period of years as the Central Board of Revenue thinks proper.

Treatment of repaid contributions.

58-S. (1) Where any contributions (including interest on contributions, if any) are repaid to an employee, the amount so repaid shall be deemed for the purposes of income-tax and super-tax to be income of the employee for that year.

(2) Where any contributions (including interest on contributions, if any) are repaid to an employee during his lifetime but not at or in connection with the termination of his employment, income-tax on the amount so repaid or paid shall except in the case of an employee whose employment was carried on abroad, be deducted by the trustees of the fund at the average rate of tax at which the employee was liable to income-tax and super-tax during the preceding three years or during such period, if less than three years, as he was a member of the fund, and shall be paid by the trustees to the

credit of the Central Government within the prescribed time and in such manner as the Central Board of Revenue may direct.

Deduction from pay of, and contributions on behalf of, employee to be included in return under section 21.

58-T. Where an employer deducts from the emoluments paid to an employee or pays on his behalf any contributions of that employee to an approved superannuation fund, he shall include all such deductions or payments in the return which he is required to furnish under section 21.

Liabilities of trustees on cessation of approval of fund.

58-U. If a fund or a part of a fund for any reason ceases to be an approved superannuation fund, the trustees of the fund shall nevertheless remain liable to account for tax on any sum paid—

(*a*) on account of returned contributions (including interest on contributions, if any), and

(*b*) in commutation or in lieu of annuities,

in so far as the sum so paid is in respect of contributions made before the fund or part of the fund ceased to be an approved fund under the provisions of this Chapter.

Particulars to be furnished in respect of super-annuation funds.

58-V. The trustees of an approved superannuation fund and any employer who contributes to an approved superannuation fund shall, when required by notice from the Income-tax Officer, within twenty-one days of the date of such notice—

(*a*) furnish to the Income-tax Officer a return containing such particulars of contributions made to the fund as the notice may require ;

(*b*) prepare and deliver to the Income-tax Officer a return containing—

(*i*) the name and place of residence of every person in receipt of an annuity from the fund,

(*ii*) the amount of the annuity payable to each annuitant,

(*iii*) particulars of every contribution (including interest on contributions, if any) returned to the employer or to employees ; and

(*iv*) particulars of sums paid in commutation or in lieu of annuities ;

(*v*) furnish to the Income-tax Officer a copy of the accounts of the fund to the last date prior to

such notice to which such accounts have been made up, together with such other information and particulars as the Central Board of Revenue may reasonably require.

CHAPTER X

MISCELLANEOUS

Power to make rules.

59. (*1*) The Central Board of Revenue may, subject to the control of the Central Government, make rules for carrying out the purposes of this Act and for the ascertainment and determination of any class of income. Such rules may be made for the whole of British India or for such part thereof as may be specified.

(*2*) Without prejudice to the generality of the foregoing power, such rules may—

(*a*) prescribe the manner in which and the procedure by which, the income, profits and gains shall be arrived at in the case of—

(*i*) incomes derived in part from agriculture and in part from business ;

* * * *

(*ii*) persons residing out of British India ;

(*b*) prescribe the procedure to be followed on applications for refunds ;

(*c*) provide for such arrangements with His Majesty's Government as may be necessary to enable the appropriate relief to be granted under section 27 of the Finance Act, 1920, or under section 49 of this Act ;

(*d*) prescribe the year which, for the purpose of relief under section 49, is to be taken as corresponding to the year of assessment for the purposes of section 27 of the Finance Act, 1920 ; and

(*e*) provide for any matter which by this Act is to be prescribed.

(*3*) In cases coming under clause (*a*) of sub-section (*2*), where the income, profits and gains liable to tax cannot be

definitely ascertained, or can be ascertained only with an amount of trouble and expense to the assessee which, in the opinion of the Central Board of Revenue, is unreasonable, the rules made under that sub-section may—

(*a*) prescribe methods by which an estimate of such income, profits and gains may be made, and

(*b*) in cases coming under sub-clause (*i*) of clause (*a*) of sub-section (2), prescribe the proportion of the income which shall be deemed to be income, profits and gains liable to tax ;

and an assessment based on such estimate or proportion shall be deemed to be duly made in accordance with the provisions of this Act.

(4) The power to make rules conferred by this section shall, except on the first occasion of the exercise thereof, be subject to the condition of previous publication.

(5) Rules made under this section shall be published in the Official Gazette, and shall thereupon have effect as if enacted in this Act.

Power to make exemptions, etc.

60. (1) The Central Government may, by notification in the official Gazette, make an exemption, reduction in rate or other modification, in respect of income-tax in favour of any class of income, or in regard to the whole or any part of the income of any class of persons.

(2) Where, by reason of any portion of an assessee's salary being paid in arrears or in advance, or by reason of his having received in any one financial year salary for more than twelve months, *or a payment which is under the provisions of sub-section (1) of section 7 a profit in lieu of salary, his income* is assessed at a rate higher than that at which it would otherwise have been assessed, the Central Government may grant *the appropriate relief.*

(3) *After the commencement of the Indian Income-tax (Amendment) Act, 1939, the power conferred by sub-section (1) shall not be exercisable except for the purpose of rescinding an exemption, reduction or modification already made.*

Appearance by authorised representative.

61. *(1) Any assessee, who is entitled or required to attend before any Income-tax authority in connection with any proceeding under this Act otherwise than when required under section 37 to attend personally for examination on oath or affirmation, may attend by a person authorised by*

him in writing in this behalf, being a relative of or a person regularly employed by the assessee, or a lawyer or accountant or Income-tax practitioner, and not being disqualified by or under sub-section (3).

(2) In this section,—

(i) a person regularly employed by the assessee shall include any officer of a Scheduled Bank with which the assessee maintains a current account or has other regular dealings ;

(ii) 'lawyer' means a Barrister-at-Law or Solicitor or any other person entitled to plead in any Court of law in British India ;

(iii) 'accountant' means a registered accountant enrolled in the Register of Accountants maintained by the Central Government under the Auditors Certificate Rules, 1932, or a holder of a restricted certificate under the Restricted Certificate Rules, 1932, or a member of an association of accountants recognised in this behalf by the Central Board of Revenue ;

(iv) 'Income-tax practitioner' means—

(a) any person who, before the 1st day of April, 1938, attended before an Income-tax authority on behalf of an assessee otherwise than in the capacity of an employee or relative of that assessee ;

(b) any person who has passed any accountancy examination recognised in this behalf by the Central Board of Revenue ; or

(c) any person who has acquired such educational qualifications as the Central Board of Revenue may prescribe for this purpose.

(3) No person who has been dismissed from Government service after the 1st day of April, 1938, shall be qualified to represent an assessee under sub-section (1) ; and if any lawyer or registered accountant is found guilty of misconduct in connection with any income-tax proceedings by the authority empowered to take disciplinary action against members of the profession to which he belongs, or if any other person is found guilty of such misconduct by the Commissioner of Income-tax, the Commissioner of Income-tax may direct that he shall be thenceforward disqualified to represent an assessee under sub-section (1) :

Provided that—

(a) no such direction shall be made in respect of any person unless he is given a reasonable opportunity of being heard,

(*b*) *any person against whom such direction is made may, within one month of the making of the direction, appeal to the Central Board of Revenue to have the direction cancelled, and*

(*c*) *no such direction shall take effect until one month from the making thereof or, when an appeal is preferred, until the disposal of the appeal.*

Receipts to be given.

62. A receipt shall be given for any money paid or recovered under this Act.

Service of notices.

63. (*1*) A notice or requisition under this Act may be served on the person therein named either by post or, as if it were a summons issued by a Court, under the Code of Civil Procedure, 1908.

(2) Any such notice or requisition may, in the case of a firm or a Hindu undivided family, be addressed to any member of the firm or to the manager, or any adult male member of the family and, in the case of any other association of persons be addressed to the principal officer thereof.

Place of assessment.

64. (*1*) Where an assessee carries on a *business, profession or vocation at any place,* he shall be assessed by the Income-tax Officer of the area in which that place is situate or, where the *business, profession or vocation* is carried on in more places than one, by the Income-tax Officer of the area in which *the principal place of his business, profession or vocation* is situate.

(2) In all other cases, an assessee shall be assessed by the Income-tax Officer of the area in which he resides.

(3) Where any question arises under this section as to the place of assessment, such question shall be determined by the Commissioner, or, where the question is between places in more provinces than one, by the Commissioners concerned, or, if they are not in agreement, by the Central Board of Revenue:

Provided that, before any such question is determined the assessee shall have had an opportunity of representing his views.

Provided further that the place of assessment shall not be called in question by an assessee if he has made a return in response to the notice under sub-section (1) of section 22 and has stated therein his principal place wherein he carries on his business, profession or vocation, or if he has not made such a return shall not be called in question after the expiry

of the time allowed by the notice undr sub-section (2) of section '22 or under section 34 for the making of a return :

Provided further that if the place of assessment is called in question by an assessee the Income-tax Officer shall, if not satisfied with the correctness of the claim, refer the matter for determination under this sub-section before assesment is made.

(4) Notwithstanding anything contained in this section, every Income-tax Officer shall have all the powers conferred by or under this Act on an Income-tax Officer in respect of any income, profits or gains accruing, or arising or received within the area for which he is appointed.

Indemnity.

65. Every person deducting, retaining or paying any tax in pursuance of this Act in respect of income belonging to another person is hereby indemnified for the deduction, retention or payment thereof.

Statement of case by Commissioner to High Court.

66. (1) If, in the course of any assessment under this Act or any proceeding in connection therewith other than a proceeding under Chapter VIII, a question of law arises, the Commissioner may, either on his own motion or on reference from any Income-tax authority subordinate to him, draw up a statement of the case and refer it with his own opinion thereon to the High Court.

(2) Within sixty days of the date on which he is served with notice of an order under section 31 or section 32, or of an order under section 33 enhancing an assessment or otherwise prejudicial to him,[1] * * *, the assessee in respect of whom the order[2] * * was passed may, by application accompanied by a fee of one hundred rupees or such lesser sum as may be prescribed, require the Commissioner to refer to the High Court any question of law arising out of such order[2] * * and the Commissioner shall, within sixty days of the receipt of such application, draw up a statement of the case and refer it with his own opinion thereon to the High Court :

Provided that a reference shall lie from an order under section 33 only on a question of law arising out of that order itself, and not on a question of law arising out of a previous

[1] The words "or of a decision by a Board of Referees under s. 33-A' were omitted by the Income-tax (Amendment) Act, 7 of 1939.

[2] The words "or decision" were omitted, *ibid.*

order under section 31 * * *[1] revised by the order under section 33:

Provided further that, if in exercise of his power of revision under section 33, the Commissioner decides the question, or if the Commissioner rejects the application on the ground that it is time barred or otherwise incompetent, or if, in exercise of his powers under sub-section (3), the Commissioner refuses to state the case, the assessee may within thirty days from the date on which he receives notice of the order passed by the Commissioner withdraw his application, and if he does so, the fee paid shall be refunded.

(3) If, on any application being made under sub-section (2), the Commissioner refuses to state the case on the ground that no question of law arises, the assessee may within six months from the date on which he is served with notice of the refusal apply to the High Court, and the High Court, if it is not satisfied of the correctness of the Commissioner's decision, may require the Commissioner to state the case and to refer it, and, on receipt of any such requisition, the Commissioner shall state and refer the case accordingly.

(3-*A*) If, on any application being made under sub-section (2), the Commissioner rejects it on the ground that it is time barred, the assessee may, within two months from the date on which he is served with notice of the order of the Commissioner, apply to the High Court, and the High Court, if it is not satisfied of the correctness of the Commissioner's decision, may require the Commissioner to treat the application as made within the time allowed under sub-section (2).

(4) If the High Court is not satisfied that the statements in a case referred under this section are sufficient to enable it to determine the question raised thereby, the Court may refer the case back to the Commissioner by whom it was stated to make such additions thereto or alterations therein as the Court may direct in that behalf.

(5) The High Court upon the hearing of any such case shall decide the questions of law raised thereby, and shall deliver its judgment thereon containing the grounds on which such decision is founded, and shall send to the Commissioner by whom the case was stated a copy of such judgment under the seal of the Court and the signature of the Registrar, and the Commissioner shall dispose of the case accordingly, or, if the case arose on a reference from any Income-tax authority

[1] The words and figures "or section 32" were omitted by the Income-tax (Am.) Act 7 of 1939.

subordinate to him, shall forward a copy of such judgment to such authority who shall dispose of the case conformably to such judgment.

(6) Where a reference is made to the High Court on the application of an assessee, the costs shall be in the discretion of the Court.

(7) Notwithstanding that a reference has been made under this section to the High Court, income-tax shall be payable in accordance with the assessment made in the case:

Provided that, if the amount of an assessment is reduced as a result of such reference, the amount overpaid shall be refunded with such interest as the Commissioner may allow *unless the High Court, on intimation given by the Commissioner within thirty days of the receipt of the result of such reference that he intends to ask for leave to appeal to His Majesty in Council, makes an order authorising the Commissioner to postpone payment of such refund until the disposal of the appeal to His Majesty in Council.*

(7-*A*) Section 5 of the Indian Limitation Act, 1908, shall apply to an application to the High Court by an assessee under sub-section (3) or sub-section (3-*A*).

(8) For the purposes of this section "High Court" means—

(*a*) in relation to * *[1] British Baluchistan, the High Court of Judicature at Lahore;

(*b*) in relation to the province of Ajmer-Merwara, the High Court of Judicature at Allahabad; and

(*c*) in relation to the province of Coorg, the High Court of Judicature at Madras.

Statement of case by Appellate Tribunal to High Court.

[[2] **66.** (1) Within sixty days of the date upon which he is served with notice of an order under sub-section (4) of section 33 the assessee or the Commissioner may, by application in the prescribed form, accompanied where application is made by the assessee by a fee of one hundred rupees, require the Appellate Tribunal to refer to the High Court any question of law arising out of such order, and the Appellate Tribunal shall within ninety days of the receipt of such application draw up a statement of the case and refer it to the High Court:

[1] The words "the North-West Frontier Province and" were omitted by the Income-tax (Amendment) Act, 7 of 1939.

[2] When Part II of the Indian Income-tax (Amendment) Act, 7 of 1939 come into force (see f.n. p. 221) s. 66 as further amended and printed here shall replace the section printed above.

Provided that, if, in the exercise of its powers under sub-section (2), the Appellate Tribunal refuses to state a case which it has been required by the assessee to state, the assessee may, within thirty days from the date on which he receives notice of the refusal to state the case, withdraw his application and, if he does so, the fee paid shall be refunded.

(2) If on any application being made under sub-section (1) the Appellate Tribunal refuses to state the case on the ground that no question of law arises, the assessee or the Commissioner, as the case may be, may, within six months from the date on which he is served with notice of the refusal, apply to the High Court, and the High Court may, if it is not satisfied of the correctness of the decision of the Appellate Tribunal, require the Appellate Tribunal to state the case and to refer it, and on receipt of any such requisition the Appellate Tribunal shall state the case and refer it accordingly.

(3) If on any application being made under sub-section (1) the Appellate Tribunal rejects it on the ground that it is time-barred the assessee or the Commissioner, as the case may be, may, within two months from the date on which he is served with notice of the rejection, apply to the High Court, and the High Court, if it is not satisfied of the correctness of the Appellate Tribunal's decision, may require the Appellate Tribunal to treat the application as made within the time allowed under sub-section (1).

(4) If the High Court is not satisfied that the statements in a case referred under this section are sufficient to enable it to determine the question raised thereby, the Court may refer the case back to the Appellate Tribunal to make such additions thereto or alterations therein as the Court may direct in that behalf.

(5) The High Court upon the hearing of any such case shall decide the questions of law raised thereby and shall deliver its judgment thereon containing the grounds on which such decision is founded and shall send a copy of such judgment under the seal of the Court and the signature of the Registrar to the Appellate Tribunal which shall pass such orders as are necessary to dispose of the case conformably to such judgment.

(6) Where a reference is made to the High Court, the costs shall be in the discretion of the Court.

(7) Notwithstanding that a reference has been made under this section to the High Court, income-tax shall be payable in accordance with the assessment made in the case:

Provided that, if the amount of an assessment is reduced as a result of such reference, the amount overpaid shall be

refunded with such interest as the Commissioner may allow unless the High Court, on intimation given by the Commissioner within thirty days of the receipt of the result of such reference that he intends to ask for leave to appeal to His Majesty in Council, makes an order authorising the Commissioner to postpone payment of such refund until the disposal of the appeal to His Majesty in Council.

(*7A*) Section 5 of the Indian Limitation Act, 1908, shall apply to an application to the High Court by an assessee under sub-section (*2*) or sub-section (*3*).

(*8*) For the purposes of this section "the High Court" means—

(*a*) in relation to British Baluchistan, the High Court of Judicature at Lahore ;

(*b*) in relation to the province of Ajmer-Merwara, the High Court of Judicature at Allahabad ; and

(*c*) in relation to the province of Coorg, the High Court of Judicature at Madras.]

Reference to be heard by Benches of High Courts, and appeal to lie in certain cases to Privy Council.

66-A. (*1*) When any case has been referred to the High Court under section 66, it shall be heard by a Bench of not less than two Judges of the High Court, and in respect of such case the provisions of section 98 of the Code of Civil Procedure, 1908, shall, so far as may be, apply notwithstanding anything contained in the Letters Patent of any High Court established by Letters Patent or in any other law for the time being in force.

Provided that where in any reference heard by the Bench of the Court of the Judicial Commissioner of the North-West Frontier Province, a difference of opinion arises between the Judicial Commissioner and the Judge of the said Court, the opinion of the Judicial Commissioner shall prevail.

(*2*) An appeal shall lie to His Majesty in Council from any judgment of the High Court delivered on a reference made under section 66 in any case which the High Court certifies to be a fit on for appeal to His Majesty in Council.

(*3*) The provisions of the Code of Civil Procedure, 1908, relating to appeals to His Majesty in Council shall, so far as may be, apply in the case of appeals under this section in like manner as they apply in the case of appeals from decrees of a High Court:

Provided that nothing in this sub-section shall be deemed to affect the provisions of sub-section (*5*) or sub-section (*7*) of section 66:

Provided further, that the High Court may, on petition made for the execution of the order of His Majesty in Council in respect of any costs awarded thereby, transmit the order for execution to any Court subordinate to the High Court.

(4) Where the judgment of the High Court is varied or reversed in appeal under this section, effect shall be given to the order of His Majesty in Council in the manner provided in sub-sections (5) and (7) of section 66 in the case of a judgment of the High Court.

(5) Nothing in this section shall be deemed—

(*a*) to bar the full and unqualified exercise of His Majesty's pleasure in receiving or rejecting appeals to His Majesty in Council, or otherwise howsoever, or

(*b*) to interfere with any rules made by the Judicial Committee of the Privy Council, and for the time being in force, for the presentation of appeals to His Majesty in Council, or their conduct before the said Judicial Committee.

Bar of suits in Civil Court.

67. No suit shall be brought in any Civil Court to set aside or modify any assessment made under this Act, and no prosecution, suit or other proceeding shall lie against any Officer of the Crown for anything in good faith done or intended to be done under this Act.

Computation of periods of limitations.

67-A. In computing the period of limitation prescribed for an appeal under this Act or for an application under section 66, the day on which the order complained of was made, and the time requisite for obtaining a copy of such order, shall be excluded.

68. [*Repeals.*] [*Repealed by the Repealing Act, 12 of 1927*].

[1] THE SCHEDULE.

[*See* section 10(7).]

Rules for the Computation of the Profits and Gains of Insurance Business.

1. In the case of any person who carries on, or at any time in the preceding year carried on, life insurance business, the profits and gains of such person from that business shall be computed separately from his income, profits or gains from any other business.

2. The profits and gains of life insurance business shall be taken to be either—

(*a*) the gross external incomings of the preceding year from that business less the management expenses of that year, or

(*b*) the annual average of the surplus disclosed by the actuarial valuation made for the last inter-valuation period ending before the year for which the assessment is to be made, after adjusting such surplus so as to exclude from it any surplus or deficit included therein which was made in any earlier inter-valuation period and any expenditure other than expenditure which may under the provisions of section 10 of this Act be allowed for in computing the profits and gains of a business,

whichever is the greater:

Provided that the amount to be allowed as management expenses shall not exceed—

(*a*) 7½ per cent. of the premiums received during the preceding year in respect of single premium life insurance policies, *plus*

(*b*) in respect of the first year's premiums received in respect of other life insurance policies for which the number of annual premiums received is less than twelve, or for which the number of years

[1] This Schedule was inserted by the Income-tax (Am.) Act 7 of 1939.

during which premiums are payable is less than twelve, for each such premium or each such year 7½ per cent. of such first year's premiums received during the preceding year, *plus*

(*c*) 85 per cent. of the first year's premiums received during the preceding year in respect of other life insurance policies and 8½ per cent. of other premiums received during that year in respect of all life insurance policies other than single premium life insurance policies.

3. In computing the surplus for the purpose of rule 2,—

(*a*) one-half of the amounts paid to or reserved for or expended on behalf of policyholders shall be allowed as a deduction :

Provided that in the first such computation made under this rule of any such surplus no account shall be taken of any such amounts to the extent to which they are paid out of or in respect of any surplus brought forward from a previous inter-valuation period :

Provided further that if any amount so reserved for policyholders ceases to be so reserved, and is not paid to or expended on behalf of policyholders, one-half of such amount, if it has been previously allowed as a deduction, shall be treated as part of the surplus for the period in which the said amount ceased to be so reserved ;

(*b*) any amount either written off or reserved in the accounts or through the actuarial valuation balance sheet to meet depreciation of or loss on the realisation of securities or other assets, shall be allowed as a deduction, and any sums taken credit for in the accounts or actuarial valuation balance sheet on account of appreciation of or gains on the realisation of the securities or other assets shall be included in the surplus:

Provided that if upon investigation it appears to the Income-tax Officer after consultation with the Superintendent of Insurance that having due regard to the necessity for making reasonable provision for bonuses to participating policyholders and for contingencies, the rate of interest or other factor employed in determining the liability in respect of outstanding policies is materially inconsistent with the valuation of the securities and other assets so as artificially to reduce the surplus, such adjustment shall be made to the allowance for depreciation of, or to the amount to be included in the surplus in

respect of appreciation of, such securities and other assets, as shall increase the surplus for the purposes of these rules to a figure which is fair and just ;

(*c*) the whole amount of interest received in respect of any securities of the Central Government which have been issued or declared to be income-tax free shall be deducted.

4. Where for any year an assessment is made in accordance with the annual average of a surplus disclosed by a valuation for an inter-valuation period exceeding twelve months, then, in computing the tax payable for that year, credit shall not be given in accordance with sub-section (5) of section 18 for the tax paid in the preceding year, but credit shall be given for the annual average of the income-tax paid by deduction at source from interest on securities or otherwise during such period.

5. For the purposes of these rules—

(*i*) 'preceding year' means that year for which annual accounts are required to be prepared under the Insurance Act, 1938, immediately preceding the year for which the assessment is to be made or until the commencement of the Insurance Act, 1938, the previous year as defined in section 2 of this Act ;

(*ii*) 'gross external incomings' means the full amount of incomings from interest, dividends, fines and fees and all other incomings from whatever source derived (except premiums received from policyholders and interest and dividends on any annuity fund) and includes also profits from reversions and on the sale or the granting of annuities, but excludes profits on the realisation of securities :

Provided that incomings, including the annual value of the property occupied by the assessee, which but for the provisions of sub-section (7) of section 10 would have been assessable under section 9 shall be computed upon the basis laid down in the last named section, and that there shall be allowed from such gross incomings such deductions as are permissible under that section.

(*iii*) 'management expenses' means the full amount of expenses (including commissions) incurred exclusively in the management of the business of life insurance, and in the case of a company carrying on other classes of business as well as the business

of life insurance in addition thereto a fair proportion of the expenses incurred in the general management of the whole business. Bonuses or other sums paid to or reserved on behalf of policy-holders, depreciation of, and losses on the realisation of, securities and any expenditure other than expenditure which may under the provisions of section 10 of this Act be allowed for in computing the profits and gains of a business are not management expenses for the purposes of these rules ;

(*iv*) 'life insurance business' means life insurance business as defined in clause (*11*) of section 2 of the Insurance Act, 1938 ;

(*v*) 'securities' includes stocks and shares.

6. The profits and gains of any business of insurance other than life insurance shall be taken to be the balance of the profits disclosed by the annual accounts, copies of which are required under the Insurance Act, 1938, to be furnished to the Superintendent of Insurance after adjusting such balance so as to exclude from it any expenditure other than expenditure which may under the provisions of section 10 of this Act be allowed for in computing the profits and gains of a business. Profits and losses on the realisation of investments, and depreciation and appreciation of the value of investments shall be dealt with as provided in rule 3 for the business of life insurance.

7. The profits and gains of companies carrying on dividing society or assessment business shall be taken to be 15 per cent. of the premium income of the previous year, or in the case of non-resident companies 15 per cent. of the British Indian premium income of the previous year.

8. The profits and gains of the British Indian branches of an insurance company not resident in British India, in the absence of more reliable data, may be deemed to be the proportion of the total world income of the company corresponding to the proportion which its British Indian premium income bears to its total premium income. For the purpose of this rule, the total world income of life insurance companies not resident in British India whose profits are periodically ascertained by actuarial valuation shall be computed in the manner laid down in these rules for the computation of the profits and gains of life insurance business carried on in British India.

9. These rules apply to the assessment of the profits of any business of insurance carried on by a mutual insurance company.

THE INCOME TAX (AMENDMENT) ACT, 1939

PART II[1]

Insertion of new section 5A in Act XI of 1922.

85. After section 5 of the said Act the following section shall be inserted, namely :—

The Appellate Tribunal.

5-A. (1) The Central Government shall appoint an Appellate Tribunal consisting of not more than ten persons to exercise the functions conferred on the Appellate Tribunal by this Act.

(2) The Appellate Tribunal shall consist of an equal number of judicial members and accountant members as hereinafter defined.

(3) A judicial member shall be a person who has exercised the powers of a District Judge or who possesses such qualifications as are normally required for appointment to the post of District Judge; and an accountant member shall be a person who has, for a period of not less than six years, practised professionally as a Registered Accountant enrolled on the Register of Accountants maintained by the Central Government under the Auditors Certificate Rules, 1932:

Provided that the Central Government may appoint as an accountant member of the Tribunal any person not possessing the qualifications required by this sub-section, if it is satisfied that he has qualifications and has had adequate experience of a character which render him suitable for appointment to the Tribunal.

(4) The Central Government shall appoint a judicial member of the Tribunal to be president thereof.

(5) The powers and functions of the Appellate Tribunal may be exercised and discharged by Benches constituted from members of the Tribunal by the president of the Tribunal.

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[1] This Part shall come into force on such subsequent date, not later than two years from the date appointed for the coming into force of Part I (which is the 1st April 1939), as the Central Government may appoint. Clauses (*vi*) and (*vii*) of sub-section (2) of section 10 shall come into effect on the 1st April 1940 (see foot-note, *ante*, p. 221). The amendments in Part II have also been incorporated in the text of the Act.

(6) A Bench shall consist of not less than two members of the Tribunal, and shall be constituted so as to contain an equal number of judicial members and accountant members, or so that the number of members of one class does not exceed the number of members of the other class by more than one.

(7) If the members of a Bench differ in opinion on any point the point shall be decided according to the opinion of the majority, if there is a majority ; but if the members are equally divided, they shall state the point or points on which they differ, and the case shall be referred by the president of the Tribunal for hearing on such point or points by one or more of the other members of the Tribunal, and such point or points shall be decided according to the opinion of the majority of the members of the Tribunal who have heard the case, including those who first heard it.

(8) Subject to the provisions of this Act, the Appellate Tribunal shall have power to regulate its own procedure, and the procedure of Benches of the Tribunal in all matters arising out of the discharge of its functions, including the place at which the Benches shall hold their sittings.

Amendment of section 28, Act XI of 1922.

86. In section 28 of the said Act,—

(a) in sub-section (1) and sub-section (2), for the words "or the Commissioner" the words "or the Appellate Tribunal", and for the words "he may direct" the words "he or it may direct" shall be substituted ;

(b) in sub-section (5), for the words "or a Commissioner who has made" the words "or the Appellate Tribunal on making" shall be substituted.

Omission of section 32, Act XI of 1922

87. Section 32 of the said Act shall be omitted.

Substitution of new section for section 33, Act XI of 1922.

88. For section 33 of the said Act the following section shall be substituted, namely :—

Appeals against orders of Appellate Assistant Commissioner.

33. (1) Any assessee objecting to an order passed by an Appellate Assistant Commissioner under section 28 or section 31 may appeal to the Appellate Tribunal within sixty days of the date on which he is served with notice of such order.

(2) The Commissioner may, if he objects to any order passed by an Appellate Assistant Commissioner under section 31, direct the Income-tax Officer to appeal to the Appellate

Tribunal against such order, and such appeal may be made at any time before the expiry of sixty days from the date of the order.

(*3*) An appeal to the Appellate Tribunal shall be in the prescribed form and shall be verified in the prescribed manner, and shall, except in the case of an appeal referred to in sub-section (*2*), be accompanied by a fee of one hundred rupees.

(*4*) The Appellate Tribunal may, after giving both parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, and shall communicate any such orders to the assessee and to the Commissioner.

(*5*) Save as provided in section 66 orders passed by the Appellate Tribunal on appeal shall be final.

Amendment of section 35, Act XI of 1922.

89. In section 35 of the said Act, sub-sections (*2*) and (*3*) shall be re-numbered sub-sections (*3*) and (*4*), respectively, and the following shall be inserted as sub-section (*2*), namely:—

"(*2*) The provisions of sub-section (*1*) apply also in like manner to the rectification of mistakes by the Appellate Tribunal."

Amendment of section 37, Act XI of 1922.

90. In section 37 of the said Act, for the words "and Commissioner" the words "Commissioners and Appellate Tribunal" and for the words "or Commissioner" in clause (*c*) the words "Commissioner or Appellate Tribunal" shall be substituted.

Amendment of section 48, Act XI of 1922.

91. In sub-section (*2*) of section 48 of the said Act, for the words "The Appellate Assistant Commissioner in the exercise of his appellate powers, or the Commissioner in the exercise of his appellate powers or powers of revision" the words "The Appellate Assistant Commissioner or the Appellate Tribunal in the exercise of their appellate powers" shall be substituted.

Amendment of section 66, Act XI of 1922.

92. In section 66 of the said Act,—

(*a*) for sub-sections (*1*), (*2*), (*3*) (*3A*), (*4*) and (*5*), the following sub-sections shall be substituted, namely:—

66. (*1*) Within sixty days of the date upon which he is served with notice of an order under sub-section (*4*) of

section 33 the assessee or the Commissioner may, by application in the prescribed form, accompanied where application is made by the assessee by a fee of one hundred rupees, require the Appellate Tribunal to refer to the High Court any question of law arising out of such order, and the Appellate Tribunal shall within ninety days of the receipt of such application draw up a statement of the case and refer it to the High Court:

Statement of case by Appellate Tribunal to High Court.

Provided that, if, in the exercise of its powers under sub-section (*2*), the Appellate Tribunal refuses to state a case which it has been required by the assessee to state, the assessee may, within thirty days from the date on which he receives notice of the refusal to state the case, withdraw his application and, if he does so, the fee paid shall be refunded.

(*2*) If on any application being made under sub-section (*1*) the Appellate Tribunal refuses to state the case on the ground that no question of law arises, the assessee or the Commissioner, as the case may be, may, within six months from the date on which he is served with notice of the refusal, apply to the High Court, and the High Court may, if it is not satisfied of the correctness of the decision of the Appellate Tribunal, require the Appellate Tribunal to state the case and to refer it, and on receipt of any such requisition the Appellate Tribunal shall state the case and refer it accordingly.

(*3*) If on any application being made under sub-section (*1*) the Appellate Tribunal rejects it on the ground that it is time-barred the assessee or the Commissioner, as the case may be, may, within two months from the date on which he is served with notice of the rejection, apply to the High Court, and the High Court, if it is not satisfied of the correctness of the Appellate Tribunal's decision, may require the Appellate Tribunal to treat the application as made within the time allowed under sub-section (*1*).

(*4*) If the High Court is not satisfied that the statements in a case referred under this section are sufficient to enable it to determine the question raised thereby, the Court may refer the case back to the Appellate Tribunal to make such additions thereto or alterations therein as the Court may direct in that behalf.

(*5*) The High Court upon the hearing of any such case shall decide the questions of law raised thereby and shall deliver its judgment thereon containing the grounds on which such

decision is founded and shall send a copy of such judgment under the seal of the Court and the signature of the Registrar to the Appellate Tribunal which shall pass such orders as are necessary to dispose of the case conformably to such judgment.

(*b*) in sub-section (*6*) the words 'on the application of an assessee' shall be omitted ;

(*c*) in sub-section (7A), for the words, brackets, figures and letter "under sub-section (*3*) or sub-section (*3A*)", the words, brackets and figures "under sub-section (*2*) or sub-section (*3*)" shall be substituted.

INDEX

D

E

F

G

H

I

R

S

T

U

V

W